Fordham International Law Journal

Volume 30, *Issue* 6 2006 *Article* 2

The Abuse of Girls in U.S. Juvenile Detention Facilities: Why the United States Should Ratify the Convention on the Rights of the Child and Establish a National Ombudsman for Children's Rights

Christina Okereke*

*

The Abuse of Girls in U.S. Juvenile Detention Facilities: Why the United States Should Ratify the Convention on the Rights of the Child and Establish a National Ombudsman for Children's Rights

Christina Okereke

Abstract

This Note argues that, to address the abuse of detained girls, the United States should ratify the CRC. This Note further argues that establishing a national independent office or ombudsman to monitor children's conditions of confinement in the United States is a superior proposal to creating a U.N.-appointed special representative on violence against children. This Note concludes that, upon ratifying the CRC, the United States should establish a national ombudsman for children's rights. Part I of this Note presents the problem of physical and sexual abuse of detained girls in the United States and reviews the applicable international human rights instruments. This Part discusses the CRC in depth, then concludes with a description of the U.N.'s juvenile justice standards. Part II of this Note outlines reasons for and against U.S. ratification of the CRC. This Part explains that, in spite of near universal CRC ratification, States Parties have not fully implemented the U.N.'s juvenile justice standards. Part II concludes with an evaluation of two proposals to remedy the problem of physical and sexual abuse of girls in state custody: (1) creating a national ombudsman to monitor detained children's conditions of confinement; and (2) establishing a U.N.-appointed special representative on violence against children. Part III argues that the United States should ratify the CRC and that establishing a national ombudsman in the United States to oversee the treatment of detained children is the better approach.

NOTE

THE ABUSE OF GIRLS IN U.S. JUVENILE DETENTION FACILITIES: WHY THE UNITED STATES SHOULD RATIFY THE CONVENTION ON THE RIGHTS OF THE CHILD AND ESTABLISH A NATIONAL OMBUDSMAN FOR CHILDREN'S RIGHTS

*Christina Okereke**

INTRODUCTION

The United States considers itself a leader in embodying human rights standards,[1] but reports of physical and sexual abuse of girls held in U.S. juvenile detention facilities undermine the United States' status as a human rights standard-bearer.[2] Staff in juvenile detention facilities apply excessive

* J.D. Candidate, 2008, Fordham University School of Law; Writing & Research Editor, Volume XXXI, *Fordham International Law Journal*; M.P.A., 2005, Maxwell School of Citizenship and Public Affairs, Syracuse University; B.A., 2001, Columbia College, Columbia University. The author sincerely thanks Professor Tracy Higgins, Mie Lewis (especially for writing the report that became the impetus for this Note), Caroline McHale, Katrina Baker, Nicole Hudak, Lindsay Kyzer, and Russell McAleavey for their invaluable guidance. The author also thanks her family and friends for their advice, encouragement, and support.

1. *See* Editorial, *For Freedom's Sake for 40 Years, Amnesty International Has Helped Prisoners of Conscience*, POST-STANDARD (Syracuse, N.Y.), Sept. 7, 2001, at A12 (mentioning U.S. view that United States is international human rights leader); *see also Poor Choice for the U.N.*, RECORD (Bergen County, N.J.), June 17, 2001, at O2 (stating that United States portrays itself as leader in international human rights).

2. *See* HUMAN RIGHTS WATCH [HRW] & ACLU, CUSTODY AND CONTROL: CONDITIONS OF CONFINEMENT IN NEW YORK'S JUVENILE PRISONS FOR GIRLS 4-5 (2006), *available at* http://hrw.org/reports/2006/us0906/us0906webwcover.pdf (reporting that prison staff at New York State's two juvenile prisons for girls have physically and sexually abused girls in those facilities, contravening international human rights standards); *see also* Sharon Coolidge, *Girls Prison Under Scrutiny*, CINCINNATI ENQUIRER, July 29, 2004, *available at* http://www.enquirer.com/editions/2004/07/29/loc_juvenilejail29.html [hereinafter Coolidge, *Girls Prison Under Scrutiny*] (discussing girls' accusations that prison guards in Scioto Juvenile Correctional Facility ("Scioto") physically and sexually assaulted girls); David M. Halbfinger, *Care of Juvenile Offenders in Mississippi Is Faulted*, N.Y. TIMES, Sept. 1, 2003, at A13 (explaining that staff in training schools for detained children in Mississippi abused girls and boys in various forms, including hog-tying, shackling to poles, choking, beating, stripping naked, and forcing children to run while carrying tires or logs, which sometimes induced vomiting); Lisa Sandberg & R.G. Ratcliffe, *Sex Abuse Reported at Second Youth Jail*, HOUSTON CHRON., Mar. 2, 2007, at A1 (stat-

force when physically restraining girls and also physically assault girls, causing serious injuries.[3] Girls report that staff members engage in sexual intercourse with, inappropriately touch, make degrading comments to, and violate the privacy of detained girls.[4]

The abuse of detained girls violates international human rights standards.[5] The Convention on the Rights of the Child

---

ing that male correctional officer in Texas juvenile jail sexually abused girls); Richard D. Walton, *Guards Accused of Sexual Misconduct*, INDIANAPOLIS STAR, Apr. 25, 2006, at 1A (reporting that guards in Indiana juvenile detention center sexually abused girls).

3. *See* HRW & ACLU, *supra* note 2, at 45-54 (explaining that prison staff at New York State's two juvenile prisons for girls apply excessive force when physically restraining girls, often resulting in injuries ranging from facial abrasions caused by being pinned on ground, to broken bones, and in one instance, concussion); *see also* Coolidge, *Girls Prison Under Scrutiny*, *supra* note 2 (noting that girls held in Scioto complained that guards broke their arms during physical restraints and that one guard struck girl in face several times, resulting in possibly permanent damage to her eardrum).

4. *See* HRW & ACLU, *supra* note 2, at 63-70, 72-74 (documenting that prison staff in New York State's juvenile prisons for girls sexually abused and harassed girls by having sexual intercourse with girls, kissing girls, making degrading remarks about girls' bodies and sexual history, and revealing girls' private medical information, such as sexually transmitted disease infection); *see also* Sharon Coolidge, *6 More Guards Face Charges*, CINCINNATI ENQUIRER, Jan. 14, 2005, at 1C [hereinafter Coolidge, *6 More Guards Face Charges*] (observing that grand jury indicted numerous Scioto guards for charges including sexual molestation); Sharon Coolidge, *Ohio Sued Over Girls' Prison*, CINCINNATI ENQUIRER, Dec. 21, 2004, at 1B [hereinafter Coolidge, *Ohio Sued Over Girls' Prison*] (reporting that male staff at Scioto performed strip searches of girls); Coolidge, *Girls Prison Under Scrutiny*, *supra* note 2 (citing sixteen-year-old girl's accusation that prison guard sexually assaulted her in 2003).

5. *See* International Covenant on Civil and Political Rights arts. 7, 10, 24, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR] (prohibiting torture and cruel, inhuman, or degrading treatment; mandating humane treatment of persons deprived of their liberty; protecting all children without regard to sex or other enumerated status); *see also* Convention on the Rights of the Child arts. 2, 3, 19, 34, 37, 40, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC] (prohibiting sex discrimination; establishing "best interests of the child" standard; requiring States Parties to prevent children's subjection to physical and mental violence, injury, abuse, neglect, maltreatment, and sexual abuse; prohibiting torture and cruel, inhuman, or degrading treatment or punishment, and mandating that States Parties treat children humanely and in accordance with their age; requiring that States Parties treat children in conflict with law with dignity in accordance with their age, and with goal of rehabilitating and reintegrating these children into society); U.N. Guidelines for the Prevention of Juvenile Delinquency, G.A. Res. 45/112, ¶ 54, U.N. Doc. A/45/49 (Dec. 14, 1990) [hereinafter Riyadh Guidelines] (condemning subjection of children to "harsh or degrading correction or punishment measures"); U.N. Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Res. 45/113, ¶¶ 12, 63, 64, U.N. Doc. A/RES/45/113 (Dec. 14, 1990) [hereinafter Rules for the Protection of Juveniles] (stating that juveniles deprived of their liberty should be held in conditions respecting their human rights, and that recourse to force and restraint instruments is strictly prohibited except in exceptional circumstances); U.N.

("CRC")[6] is particularly relevant to the treatment of detained girls.[7] The CRC requires that children deprived of their liberty be treated with dignity and respect, and prohibits cruel, degrading, and inhuman treatment.[8] The CRC is the most widely accepted United Nations ("U.N.") treaty in the world.[9] The United States and Somalia are the only countries in the world that have not ratified the CRC.[10] Numerous scholars and activ-

---

Standard Minimum Rules for the Administration of Juvenile Justice, G.A. Res. 40/33, ¶ 26.4, U.N. Doc. A/40/53 (Nov. 29, 1985) [hereinafter Beijing Rules] (urging fair treatment of female juvenile offenders and special attention to their personal needs and problems).

6. CRC, *supra* note 5.

7. *See* Committee on the Rights of the Child [CRC Committee], *Recommendation on the Administration of Juvenile Justice*, ¶¶ 1-5, U.N. Doc. CRC/C/90 (Sept. 1999), *available at* http://www.ohchr.org/english/bodies/crc/decisions.htm [hereinafter *CRC Committee Recommendation*] (encouraging States Parties to CRC, U.N. agencies and bodies, and Office of U.N. High Commissioner for Human Rights ("OHCHR") to ensure CRC's integration with U.N. juvenile justice standards); *see also* CRC Committee, *General Comment No. 10: Children's Rights in Juvenile Justice*, ¶ 3, U.N. Doc. CRC/C/GC/10 (Feb. 9, 2007), *available at* http://www.ohchr.org/english/bodies/crc/docs/AdvanceVersions/GeneralComment10-02feb07.pdf [hereinafter *General Comment No. 10*] (underscoring that CRC obliges States Parties to develop and implement comprehensive juvenile justice policy, and encouraging integration of Beijing Rules, Riyadh Guidelines, and Rules for the Protection of Juveniles with such comprehensive policy).

8. *See* CRC, *supra* note 5, art. 37 (requiring that States Parties prohibit "torture or other cruel, inhuman or degrading treatment or punishment" of children and treat children deprived of their liberty with humanity and respect for their inherent dignity).

9. *See* Amy McCoy, *Children "Playing Sex for Money": A Brief History of the World's Battle Against the Commercial Sexual Exploitation of Children*, 18 N.Y.L. SCH. J. HUM. RTS. 499, 499 (2002) (stating that CRC is world's most widely accepted human rights treaty); *see also* Megan E. Kures, Note, *The Effect of Armed Conflict on Children: The Plight of Unaccompanied Refugee Minors*, 25 SUFFOLK TRANSNAT'L L. REV. 141, 151 (2001) (affirming that CRC is most widely accepted international human rights treaty).

10. *See* Office of the U.N. High Comm'r for Human Rights [OHCHR], Convention on the Rights of the Child New York, 20 November 1989, http://www.ohchr.org/english/countries/ratification/11.htm (last visited Mar. 11, 2007) (illustrating that United States and Somalia are only U.N. Member States that have not acceded to or ratified CRC); *see also* Roper v. Simmons, 543 U.S. 551, 576 (2005) (noting that United States and Somalia are only nations that have not ratified CRC). The United States signed the CRC in 1995. *See* OHCHR, *supra* (indicating that United States signed CRC on Feb. 16, 1995). The United States has ratified the CRC's Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution, and child pornography. *See* Cris R. Revaz & Jonathan Todres, *The Optional Protocols to the Convention on the Rights of the Child and the Impact of U.S. Ratification*, *in* THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: AN ANALYSIS OF TREATY PROVISIONS AND IMPLICATIONS OF U.S. RATIFICATION 293, 294 (Jonathan Todres et al. eds., 2006) (explaining that United States ratified both Optional Protocols in 2002). Somalia is unable to ratify the CRC because it does not have a recognized government. *See* Cris R. Revaz, *An Introduction to the U.N. Convention on the Rights of the Child*, *in* THE U.N. CONVENTION ON THE RIGHTS OF

ists advocate for U.S. ratification of the CRC, emphasizing that ratifying the CRC would spur the United States to evaluate its policies on children and would allow the United States to promote other nations' compliance with the treaty.[11] Other commentators oppose U.S. ratification of the CRC, arguing that ratification would undermine U.S. family values and sovereignty.[12]

States Parties must implement the CRC in conjunction with the U.N.'s juvenile justice standards.[13] The U.N. Guidelines for the Prevention of Juvenile Delinquency ("Riyadh Guidelines"),[14] the U.N. Rules for the Protection of Juveniles Deprived of their Liberty ("Rules for the Protection of Juveniles"),[15] and the U.N. Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules")[16] are the leading standards.[17] Although the CRC is the world's most accepted U.N. treaty, States Parties have failed to fully implement the U.N.'s juvenile justice standards.[18]

THE CHILD, *supra*, at 9 (stating that Somalia has signed CRC but has no recognized government to ratify treaty).

11. *See* David P. Stewart, *Ratification of the Convention on the Rights of the Child*, 5 GEO. J. ON FIGHTING POVERTY 161, 163 (1998) (explaining that many advocates for U.S. ratification believe that CRC would provide powerful mechanism for requiring all levels of U.S. government to improve their treatment of children); Campaign for U.S. Ratification of the Convention on the Rights of the Child, http://www.childrightscampaign.org/crcmatters.htm (last visited May 11, 2007) (noting that without ratification, United States cannot participate in advising, evaluating, and monitoring other nations' compliance with CRC).

12. *See* Jonathan Todres, *Analyzing the Opposition to U.S. Ratification of the U.N. Convention on the Rights of the Child*, *in* THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD, *supra* note 10, at 20 [hereinafter Todres, *Analyzing the Opposition*] (explaining that opponents to U.S. ratification believe that CRC would interfere with parents' ability to raise their children and would impair U.S. sovereignty); *see also* Stewart, *supra* note 11, at 165 (discussing opponents' fears that CRC ratification would allow U.N. intrusion in family matters and would interfere with U.S. sovereignty).

13. *See General Comment No. 10*, *supra* note 7, ¶ 3 (encouraging CRC's integration with Beijing Rules, Riyadh Guidelines, and Rules for the Protection of Juveniles); *see also CRC Committee Recommendation*, *supra* note 7 (clarifying that implementation of CRC articles 37, 39, and 40 should integrate Beijing Rules, Riyadh Guidelines, and Rules for the Protection of Juveniles).

14. Riyadh Guidelines, *supra* note 5.

15. Rules for the Protection of Juveniles, *supra* note 5.

16. Beijing Rules, *supra* note 5.

17. *See General Comment No. 10*, *supra* note 7, ¶ 3 (affirming that Beijing Rules, Riyadh Guidelines, and Rules for the Protection of Juveniles are integral to CRC's interpretation); *see also CRC Committee Recommendation*, *supra* note 7 (commenting that States Parties should implement CRC's juvenile justice provisions in conjunction with Beijing Rules, Riyadh Guidelines, and Rules for the Protection of Juveniles).

18. *See CRC Committee Recommendation*, *supra* note 7 (explaining that States Parties

A key recommendation of the juvenile justice standards is that countries institute independent monitoring of facilities detaining children.[19] The lack of independent monitoring of juvenile detention facilities and their personnel is a principal cause of the physical and sexual abuse of detained girls.[20] One proposal to remedy the problem is for countries to establish an independent office or ombudsman to monitor the conditions of confinement in facilities detaining juveniles.[21] A second proposal is for the U.N. to appoint a special representative of the Secretary-General on violence against children who can serve as a high-profile advocate for children's right to freedom from violence.[22]

This Note argues that, to address the abuse of detained girls, the United States should ratify the CRC. This Note further argues that establishing a national independent office or ombudsman to monitor children's conditions of confinement in the United States is a superior proposal to creating a U.N.-appointed special representative on violence against children.

---

to CRC have not fully implemented U.N.'s juvenile justice standards); *see also General Comment No. 10*, *supra* note 7, ¶ 2 (asserting that States Parties to CRC have not implemented comprehensive juvenile justice policies in accordance with CRC).

19. *See* Riyadh Guidelines, *supra* note 5, ¶ 57 (recommending that governments establish independent office to monitor treatment of detained children); Rules for the Protection of Juveniles, *supra* note 5, ¶ 77 (same).

20. *See* HRW & ACLU, *supra* note 2, at 7 (commenting that lack of independent oversight is important cause contributing to abuse of girls in New York State's juvenile prisons for girls); *see also* CITIZENS' COMM. FOR CHILDREN OF N.Y., INC. [CCC], GIRLS IN THE JUVENILE JUSTICE SYSTEM: UNDERSTANDING SERVICE NEEDS AND EXPERIENCES 23-24 (2006), *available at* http://www.cccnewyork.org/publications/Understanding%20Girls%202006.pdf (recommending that New York City and New York State develop independent monitoring systems to assure quality of care provided to detained girls).

21. *See* HRW & ACLU, *supra* note 2, at 12-13 (urging New York State government to ensure effectiveness of ombudman's office to monitor conditions of confinement in juvenile prisons for girls); *see also* CCC, *supra* note 20, at 23-24 (suggesting that New York City and State governments strengthen oversight of independent office to provide better treatment to detained girls).

22. *See* INDEPENDENT EXPERT FOR THE U.N. SECRETARY-GENERAL'S STUDY ON VIOLENCE AGAINST CHILDREN, WORLD REPORT ON VIOLENCE AGAINST CHILDREN 25 (2006), *available at* http://www.violencestudy.org/IMG/pdf/1._World_Report_on_Violence_against_Children.pdf [hereinafter WORLD REPORT ON VIOLENCE AGAINST CHILDREN] (recommending that U.N. establish special representative of Secretary-General on violence against children to serve as "high-profile global advocate" to promote prevention and eradication of all violence against children); *see also* Child Rights Information Network [CRIN], NGOs Recommend a Special Representative on Violence against Children, http://www.crin.org/violence/search/closeup.asp?infoID=6812 (last visited Mar. 27, 2007). These proposals are not mutually exclusive. *See* WORLD REPORT ON VIOLENCE AGAINST CHILDREN, *supra*, at 25 (recommending that governments establish children's rights ombudsmen and that U.N. appoint special representative).

This Note concludes that, upon ratifying the CRC, the United States should establish a national ombudsman for children's rights.

Part I of this Note presents the problem of physical and sexual abuse of detained girls in the United States and reviews the applicable international human rights instruments. This Part discusses the CRC in depth, then concludes with a description of the U.N.'s juvenile justice standards. Part II of this Note outlines reasons for and against U.S. ratification of the CRC. This Part explains that, in spite of near universal CRC ratification, States Parties have not fully implemented the U.N.'s juvenile justice standards. Part II concludes with an evaluation of two proposals to remedy the problem of physical and sexual abuse of girls in state custody: (1) creating a national ombudsman to monitor detained children's conditions of confinement; and (2) establishing a U.N.-appointed special representative on violence against children. Part III argues that the United States should ratify the CRC and that establishing a national ombudsman in the United States to oversee the treatment of detained children is the better approach.

I. *THE PHYSICAL AND SEXUAL ABUSE OF GIRLS IN U.S. JUVENILE DETENTION FACILITIES*

Part I of this Note first explains the physical and sexual abuse of detained girls in the United States. This Part then discusses the international human rights instruments applicable to the problem. Part I discusses the CRC in detail and concludes with a review of the U.N.'s juvenile justice standards.

A. *Physical and Sexual Abuse of Detained Girls in the United States*

Physical and sexual abuse of girls held in U.S. juvenile detention facilities is pervasive. Reports of detention facility staff abusing girls are surfacing across the United States, including in Indiana, Mississippi, New York, Ohio, and Texas.[23] Girls have

23. *See* HRW & ACLU, *supra* note 2, at 4-5 (documenting abuse of incarcerated girls in New York State); Coolidge, *Girls Prison Under Scrutiny*, *supra* note 2 (reporting abuse of detained girls in Ohio); Halbfinger, *supra* note 2 (discussing litany of abuses perpetrated against juveniles detained in Mississippi); Sandberg & Ratcliffe, *supra* note 2 (describing abuse of girls in Texas juvenile jail); Walton, *supra* note 2 (detailing sexual abuse of girls held in Indiana detention facility).

suffered severe injury and humiliation because of this widespread physical and sexual abuse.[24]

1. Physical Abuse

Physical abuse often occurs when staff members physically restrain detained girls.[25] During a physical restraint, one or more staff members seizes a girl from behind by her arms, pushes her face down to the floor, then pulls her arms behind her and handcuffs or holds her arms.[26] The application of excessive force results in injuries to girls ranging from facial abrasions to broken bones.[27] Mostly male staff members conduct the excessively forceful restraints.[28] Staff members often impose physical force for minor infractions that do not endanger anyone's safety.[29] Examples include using physical force when girls are argumentative, fail to raise their hands before speaking,

---

24. *See* HRW & ACLU, *supra* note 2, at 47-49 (stating that girls incarcerated in New York State's juvenile prisons for girls suffered facial abrasions and broken bones); *id.* at 63-75 (highlighting that staff members sexually abused girls and violated their privacy); *see also* Coolidge, *Girls Prison Under Scrutiny*, *supra* note 2 (explaining that staff members broke girls' arms).

25. *See* HRW & ACLU, *supra* note 2, at 45 (observing that incarcerated girls in New York State's juvenile prisons for girls reported staff members' use of excessive physical force); *see also* Coolidge, *Girls Prison Under Scrutiny*, *supra* note 2 (reporting that two girls held in Scioto complained that staff members broke their arms during physical restraints).

26. *See* HRW & ACLU, *supra* note 2, at 45 (describing physical restraint procedure used in New York State's juvenile prisons for girls); *cf.* Coolidge, *Ohio Sued Over Girls' Prison*, *supra* note 4 (explaining that staff at Scioto in Ohio applied physical force by bending, grabbing, gripping, hitting, and twisting girls' bodies).

27. *See* HRW & ACLU, *supra* note 2, at 47-49 (documenting that injuries resulting from excessively violent physical restraints included facial abrasions, which girls called "rug burns," lacerations requiring sutures, and in at least one case, broken arm and leg); *see also* Coolidge, *Girls Prison Under Scrutiny*, *supra* note 2 (stating that staff members broke two girls' arms while physically restraining them).

28. *See* HRW & ACLU, *supra* note 2, at 45, 50, 70 (quoting formerly incarcerated girl who commented, "It was grown men there attacking girls like they had no sense.;" pointing out that mostly male staff perpetrated physical abuse against girls); *see also* Coolidge, *Girls Prison Under Scrutiny*, *supra* note 2 (mentioning that many of girls' complaints concerning their conditions of confinement involved abuse by male guards); Sharon Coolidge & Dan Horn, *Four Teens at Scioto Girls Prison Sue State*, CINCINNATI ENQUIRER, July 30, 2004, at 1A (reporting that four girls who sued Ohio Department of Youth Services alleged male corrections officers abused them in Scioto).

29. *See* HRW & ACLU, *supra* note 2, at 45, 46 (discussing staff's use of physical force to punish girls for minor rule violations when girl's conduct posed no threat to safety of herself, other residents, or staff; quoting formerly incarcerated girl who remarked about prison staff, "They thought restraints were the answer to everything. They'd use them for anything."); *see also* Coolidge, *Ohio Sued Over Girls' Prison*, *supra*

make their beds improperly, mop the floor incorrectly, rap, refuse to go swimming, and speak too loudly.[30]

In addition to physical abuse occurring during physical restraints, staff members in juvenile detention facilities physically assault detained girls. The assaults include choking, hitting, kicking, and throwing girls.[31] Girls suffer serious and sometimes permanent injuries from these physical assaults.[32]

2. Sexual Abuse

Girls in state custody in the United States also experience sexual abuse in various forms.[33] Mostly male staff members perpetrate this sexual abuse.[34] Staff members engage in numerous forms of sexual misconduct with the girls they are charged with protecting, including inappropriately touching, flirting with, and making degrading comments to girls, such as vulgar references to girls' prior sexual experiences and commercial sexual ex-

---

note 4 (noting that detention facility staff punished girls for being argumentative, horse-playing, mopping floors improperly, and rapping).

30. *See* HRW & ACLU, *supra* note 2, at 46 (explaining that staff restrained girls for minor infractions such as being loud, failing to raise their hands before speaking or acting, making their beds incorrectly, refusing to go swimming, and talking back or "mouthing off"); Coolidge, *Ohio Sued Over Girls' Prison*, *supra* note 4 (reporting that staff punished girls for being argumentative, mopping floors improperly, and rapping).

31. *See* HRW & ACLU, *supra* note 2, at 51 (citing New York State Office of Child and Family Services records documenting that prison staff choked, hit, kicked, used "pressure points" on, and threw incarcerated girls against walls); *see also* Coolidge, *Girls Prison Under Scrutiny*, *supra* note 2 (mentioning that staff member struck girl's face several times).

32. *See* Coolidge, *Girls Prison Under Scrutiny*, *supra* note 2 (noting that detention facility staff member smacked girl's face several times, causing possibly permanent damage to girl's hearing); Coolidge & Horn, *supra* note 28 (stating that in lawsuit against Ohio Department of Youth Services, girls alleged injuries including ruptured eardrum and serious bruises); *see also* HRW & ACLU, *supra* note 2, at 51 (reporting that staff member bruised girl's neck while "handplaying" with her).

33. *See* HRW & ACLU, *supra* note 2, at 63-75 (elucidating that prison staff have engaged in sexual intercourse with, flirted with, inappropriately touched, and violated privacy of incarcerated girls); *see also* Coolidge, *Girls Prison Under Scrutiny*, *supra* note 2 (reporting that staff member sexually assaulted detained girl); Halbfinger, *supra* note 2 (noting that staff at juvenile training school forced girls to disrobe and lie naked on floor in solitary confinement).

34. *See* HRW & ACLU, *supra* note 2, at 70 (mentioning that male staff perpetrated nearly all sexual abuse committed against girls in New York State's juvenile prisons for girls); *see also* Coolidge, *Girls Prison Under Scrutiny*, *supra* note 2 (noting that girls' complaints included many abuses by male guards); Coolidge & Horn, *supra* note 28 (reporting that four girls who sued Ohio Department of Youth Services alleged abuse by male corrections officers, including one sexual assault).

ploitation.[35] In some instances, detention facility staff engage in sexual intercourse with girls.[36]

Another aspect of the sexual abuse detained girls suffer is the violation of their privacy by male staff members. In some juvenile justice institutions, male staff conducted strip searches of girls.[37] In New York's prisons for girls, male staff members monitor the girls' dressing and shower areas, making girls feel humiliated.[38] Staff members in New York's facilities also tease girls about their prior sexually transmitted disease infections in front of other girls.[39]

B. *Unique Circumstances of Girls in Conflict with the Law*

Girls are the fastest growing group of juveniles detained in the United States.[40] The U.S. juvenile justice system detains a

---

35. *See* HRW & ACLU, *supra* note 2, at 69 (stating that girl alleged male staff member slapped her butt); *id.* at 64, 67-69 (explaining that male staff members flirted with girls and made sexually-charged remarks to them, such as telling girl to stop walking in certain manner because "she is not on the strip"); Walton, *supra* note 2 (reporting that male staff members sent girls love letters and in one case gave girl teddy bear with words "I love you" printed on it); *see also* CCC, *supra* note 20, at 12 (noting that girls in conflict with law report high incidence of inappropriate touching by staff in juvenile justice system).

36. *See* HRW & ACLU, *supra* note 2, at 65-66 (finding that male staff had sexual intercourse with at least three girls confined in New York State's juvenile prisons for girls); *see also* Sandberg & Ratcliffe, *supra* note 2 (reporting that male guard in Texas juvenile facility took particular interest in one girl, having sexual intercourse with her at least ten times, and provided her extra food, phone privileges, and prescription drugs in exchange); Doug J. Swanson, *Sex Abuse Alleged at 2nd Youth Jail*, DALLAS MORNING NEWS, March 2, 2007, at A1 (explaining that same male guard in Texas facility had sexual intercourse with at least three girls in storage closet within correctional facility, and provided them with candy and drugs in exchange); Walton, *supra* note 2 (stating that male guards at Indiana juvenile detention center had sex with girls).

37. *See* Coolidge, *Ohio Sued Over Girls' Prison*, *supra* note 4 (reporting that male staff members in Ohio's juvenile correctional facility for girls conducted strip searches of girls); *see also* Press Release, HRW, South Dakota: Stop Abuses of Detained Kids (March 6, 2000), *available at* http://hrw.org/English/docs/2000/03/06/usdom455.htm (asserting that male guards strip-searched girls in South Dakota detention facility).

38. *See* HRW & ACLU, *supra* note 2, at 68 (reporting that male staff members supervised girls' shower and changing area); *see also* INDEPENDENT EXPERT FOR THE U.N. SECRETARY-GENERAL'S STUDY ON VIOLENCE AGAINST CHILDREN, WORLD REPORT ON VIOLENCE AGAINST CHILDREN 196 (2006), *available at* http://www.violencestudy.org/IMG/pdf/5._World_Report_on_Violence_against_Children.pdf (noting that internationally, male staff in juvenile detention facilities often watch girls dress, shower, and use toilet).

39. *See* HRW & ACLU, *supra* note 2, at 73-74 (mentioning that staff intentionally embarrassed girls by disclosing their private medical information in front of other residents).

40. *See* CCC, *supra* note 20, at 9 (observing that for over ten years, girls have been

disproportionate number of girls of color.[41] Detained girls are also typically from low-income backgrounds.[42] Girls in conflict with the law often experience academic difficulty, unhealthy peer relationships, and unstable home environments.[43] These socio-economic disadvantages are factors that increase the risk of girls becoming involved in the juvenile justice system.[44]

Some girls are detained for committing violent crimes,[45] but many girls become involved in the juvenile justice system by committing status offenses.[46] Status offenses are acts for which an adult would not be arrested, such as running away from home

---

fastest growing segment of juvenile justice population). *But see* HRW & ACLU, *supra* note 2, at 33 (emphasizing that although girls represent increasing percentage of children in conflict with law in United States, proportion remains relatively small); *id.* at 36-37 (opining that changes in law, police practices, and responses of parents, teachers, and social workers to aggressive behavior in girls have caused spike in girls' arrest rate).

41. *See* HRW & ACLU, *supra* note 2, at 43 (citing statistic that thirty-four percent of girls nationwide are of color, yet girls of color represent fifty-two percent of detained children); *see also* ACLU & HRW, FACT SHEET: GIRLS IN THE JUVENILE JUSTICE SYSTEM, *available at* http://hrw.org/reports/2006/us0906/us0906factsheet.pdf [hereinafter 2006 ACLU & HRW, FACT SHEET] (providing statistics showing that among girls in custody nationwide, thirty-five percent are African-American, fifteen percent are Hispanic, and forty-five percent are Caucasian).

42. *See* HRW & ACLU, *supra* note 2, at 26 (observing that girls in conflict with law typically come from impoverished families); *see also* CCC, *supra* note 20, at 17 (documenting that majority of girls in conflict with law interviewed for report experienced poverty and lived in single-parent homes).

43. *See* CCC, *supra* note 20, at 11 (noting that girls in juvenile justice system experience abuse, academic failure, negative peer relationships, and unstable family environments); *see also* HRW & ACLU, *supra* note 2, at 26-32 (describing disadvantages that girls in conflict with law face in their communities, families, and schools).

44. *See* HRW & ACLU, *supra* note 2, at 26-27 (opining that history of emotional, physical, and sexual abuse may be most significant factor leading to juvenile delinquency in girls); *see also* CCC, *supra* note 20, at 12 (noting research suggesting that emotional, physical, and sexual abuse often leads to girls' involvement in juvenile justice system).

45. *See* CCC, *supra* note 20, at 9 (reporting that national percentage of girls arrested for assault and weapons possession increased between 1999 and 2003); *see also* GIRLS INC., GIRLS AND VIOLENCE 3 fig.8 (2004), *available at* http://www.girlsinc.com/ic/content/GirlsandViolence.pdf (illustrating that among all juvenile arrests nationwide in 2003, girls were arrested for twenty-three percent of aggravated assaults, twelve percent of burglaries, ten percent of murders, nine percent of robberies, and one percent of rapes).

46. *See* HRW & ACLU, *supra* note 2, at 35 (explaining that although U.S. federal law prohibits incarceration of children for status offenses, nationwide girls are disproportionately arrested and incarcerated for status offenses); *see also* GIRLS INC., *supra* note 45, at 3 (stating that most girls' first contact with juvenile justice system results from committing status offense, such as possessing alcohol or cigarettes, running away from home, skipping school, or violating curfew).

or skipping school.[47] Judges, police, and prosecutors disproportionately target girls for the commitment of status offenses to control their behavior, especially their sexual conduct.[48] Because the prosecution of status offenses persists, girls are often detained for running away from abusive home environments.[49]

Physical and sexual abuse poses unique risks to detained girls because of their particular vulnerability. Girls are more likely than boys to be sexually abused in detention.[50] Research indicates that between forty percent and ninety-two percent of girls in state custody suffer physical or sexual abuse prior to detention.[51] A significant number of girls in conflict with the law suffer from mental health disorders before entering detention.[52] Studies suggest that detained girls' mental health problems stem

47. *See* HRW & ACLU, *supra* note 2, at 33 (defining status offenses as acts for which adults would not be prosecuted, including disobedience of parents and truancy); *see also* GIRLS INC., *supra* note 45, at 3.

48. *See* HRW & ACLU, *supra* note 2, at 33-35 (pointing out that in early 20th century, attempts to control girls' behavior and sexual morality in particular caused high rate of institutionalization for girls; underscoring that New York State prosecutes girls for prostitution even though under state law, children under seventeen cannot legally consent to sex; emphasizing that although federal law prohibits prosecution of juveniles for status offenses, girls continue to be disproportionately detained for committing these offenses); *see also* Coalition for Juvenile Justice [CJJ], Fact Sheet: Girls and the Juvenile Court System, http://juvjustice.org/factsheet_6.html (last visited Mar. 24, 2007) [hereinafter CJJ Fact Sheet] (reporting that in 2003, girls comprised twenty-seven percent of children involved with juvenile courts, but constituted sixty percent of juvenile arrests for running away from home and close to seventy percent of juvenile arrests for prostitution).

49. *See* HRW & ACLU, *supra* note 2, at 33 (observing that girls running away from abusive home environments may face arrest for act of running away); *see also* GIRLS INC., *supra* note 45, at 3 fig.8 (showing that in 2003, girls comprised fifty-nine percent of nationwide juvenile arrests for running away).

50. *See* HRW & ACLU, *supra* note 2, at 63 (stating that incarcerated girls are more often victims of sexual abuse than incarcerated boys); *see also* HOWARD N. SNYDER & MELISSA SICKMUND, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 231 (2006), *available at* http://ojjdp.ncjrs.gov/ojstatbb/nr2006/downloads/NR2006.pdf (reporting that although girls comprise eleven percent of children in state custody, detained girls constitute thirty-four percent of victims of sexual violence).

51. *See* CCC, *supra* note 40, at 12 (reporting result of study finding that up to ninety-two percent of detained girls suffer abuse prior to detention); *see also* GIRLS INC., *supra* note 45, at 3 (citing statistic that between forty and seventy percent of girls in juvenile justice system experience physical and sexual abuse before entering detention).

52. *See* HRW & ACLU, *supra* note 2, at 89 (noting that significant percentage of incarcerated youth have post-traumatic stress disorder ("PTSD"), and that girls are more likely than boys to develop PTSD); *see also* ACLU & HRW FACT SHEET, *supra* note 41 (citing statistic that majority of girls entering juvenile justice system have PTSD and other mental health and substance abuse problems).

from the physical and sexual abuse they endure prior to detention.[53] Subjection to physical and sexual abuse at the hands of staff members in detention facilities retraumatizes detained girls.[54] Girls' suffering may be particularly acute because sexually abused girls and women often do not report sexual abuse they suffer in state custody because over time they have grown accustomed to men in positions of trust violating their bodily integrity.[55]

C. *United Nations ("U.N.") Standards Governing the Treatment of Detained Girls*

Numerous U.N. human rights treaties and standards apply to the physical and sexual abuse of detained girls.[56] The International Convention on Civil and Political Rights ("ICCPR")[57] prohibits discrimination based on sex and requires States Parties to provide men and women equal civil and political rights.[58] It prohibits cruel, inhuman, and degrading treatment and punishment and requires governments to treat all persons deprived of their liberty with humanity.[59] The ICCPR accords specific rights

---

53. *See* HRW & ACLU, *supra* note 2, at 27 (suggesting that previous abuse and trauma explains why majority of girls in conflict with law suffer from PTSD and other mental health problems); *see also* CCC, *supra* note 20, at 12 (reporting that repeated exposure to violence raises incidence of PTSD among adolescent girls in juvenile justice system, and that almost fifty percent of court-involved girls meet diagnostic criteria for PTSD).

54. *See* HRW & ACLU, *supra* note 2, at 51-52, 69-70 (explaining that detained girls who have previously suffered abuse are retraumatized when detention facility staff subject them to physical and sexual abuse); *see also* CCC, *supra* note 20, at 12 (discussing study finding that common disciplinary practices employed in juvenile justice facilities, including forced disrobing and use of restraints, recreates girls' past traumatic experiences).

55. *See* HRW & ACLU, *supra* note 2, at 64-65 (quoting psychiatrist who specializes in prisoners' mental health, who explained that because of women prisoners' past physical and sexual abuse, they are confused and ashamed when men sexually violate them and lack confidence to ask male perpetrator to stop, resulting in continuation of abuse); *cf.* WORLD REPORT ON VIOLENCE AGAINST CHILDREN, *supra* note 22, at 10 (observing that few children report incidences of violence).

56. This Note focuses only on U.N. human rights treaties and standards and does not review regional human rights instruments and federal and state laws applicable to the physical and sexual abuse of detained girls in the United States.

57. ICCPR, *supra* note 5.

58. *See* ICCPR, *supra* note 5, arts. 2 & 3 (providing that States Parties prevent sex discrimination; requiring that States Parties ensure equal right of men and women to civil and political rights).

59. *See* ICCPR, *supra* note 5, arts. 7 & 10 (prohibiting torture and cruel, degrading,

to children, providing that all children have the right to protection and that juvenile offenders receive treatment appropriate for their age.[60] The United States has ratified the ICCPR,[61] thus the convention is binding on the United States through the Supremacy Clause of the U.S. Constitution.[62]

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT")[63] requires that States Parties systematically review conditions of confinement to ensure that inhuman or degrading treatment does not occur[64] and educate all officials involved in the confinement or treatment of arrested or detained persons about CAT's prohibitions.[65] The United States ratified CAT in 1994.[66] The Committee against Torture, which supervises States Parties' compliance with CAT,[67] has advised the United States to adopt all appropriate measures to ensure that detained women are treated in accordance with international standards.[68]

---

or inhuman treatment or punishment; requiring States Parties to treat all persons "with humanity and with respect for the inherent dignity of the human person").

60. *See* ICCPR, *supra* note 5, arts. 10 & 24 (requiring that juvenile offenders receive treatment appropriate to their age and legal status; providing that every child is entitled to measures of protection as his or her age may require); *see also* HRW & ACLU, *supra* note 2, at 21 (affirming that Article 24 of ICCPR requires that incarcerated children receive special treatment).

61. *See* OHCHR, Status of Ratifications of the Principal International Human Rights Treaties, at 11, *available at* http://www.unhchr.ch/pdf/report.pdf (documenting that United States ratified ICCPR on Sept. 8, 1992); *see also* HRW & ACLU, *supra* note 2, at 21 (stating that United States ratified ICCPR in 1992).

62. *See* U.S. CONST. art. VI, cl. 2 (declaring that all treaties made under U.S. authority are supreme federal law); *see also* Philip V. Tisne, Note, *The ICJ and Municipal Law: The Precedential Effect of the* Avena *and* Lagrand *Decisions in U.S. Court*, 29 FORDHAM INT'L L.J. 865, 865 (explaining that Supremacy Clause of U.S. Constitution makes treaties "supreme law of the land").

63. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 14 U.N.T.S. 85 [hereinafter CAT].

64. *See id.* art. 11 (requiring States Parties to "keep under systematic review" conditions of custody and treatment of arrested, detained, and imprisoned persons).

65. *See id.* art. 10 (mandating that States Parties fully include information on CAT's torture prohibition in instructions, rules, and training provided to various personnel involved with arrested, detained, and incarcerated persons).

66. *See* OHCHR, Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, http://www.ohchr.org/english/bodies/ratification/9.htm (last visited Mar. 23, 2007) (showing that United States ratified CAT on Oct. 21, 1994); *see also* HRW & ACLU, *supra* note 2, at 22 (noting that United States ratified CAT).

67. *See* CAT, *supra* note 63, art. 17 (establishing Committee against Torture to monitor States Parties' compliance with treaty).

68. *See* Committee against Torture, *Conclusions and Recommendations of the Committee*

The Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW")[69] prohibits discrimination against women[70] and girls.[71] Unlike the ICCPR and CAT, however, CEDAW lacks any specific provisions protecting detained girls from violence.[72] The United States signed but has not ratified CEDAW.[73]

1. Convention on the Rights of the Child ("CRC")

The CRC is the most comprehensive international human rights treaty protecting children's rights.[74] The CRC defines a child as any person under eighteen years old.[75] The CRC establishes the "best interests of the child" standard for protecting children's rights.[76] The treaty requires that States Parties take all

---

against Torture: United States of America, ¶ 33, U.N. Doc. CAT/C/USA/CO/2 (July 25, 2006), *available at* http://daccessdds.un.org/doc/UNDOC/GEN/G06/432/25/PDF/G0643225.pdf?OpenElement; *see also* HRW & ACLU, *supra* note 2, at 22 (quoting Committee against Torture's recommendation).

69. Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

70. *See id.* art. 2 (requiring that States Parties condemn all forms of discrimination against women).

71. *See* WORLD REPORT ON VIOLENCE AGAINST CHILDREN, *supra* note 22, at 31 (stating that CEDAW is fully applicable to girls); *see also* HRW & ACLU, *supra* note 2, at 22 (mentioning that CEDAW is particularly relevant to detained girls).

72. *See* CEDAW, *supra* note 69 (failing to mention women's or girls' right to protection from violence when deprived of their liberty); *see also* CRIN, Ending Legalised Violence against Children, http://www.crin.org/resources/infoDetail.asp?ID=12569 (last visited Mar. 23, 2007) (affirming that CEDAW fails to expressly prohibit violence against women, but noting that treaty's monitoring committee emphasizes that Articles 2, 5, 11, 12, and 16 require States Parties to prevent violence against women, and that full implementation of treaty mandates that States Parties eradicate violence against women in all forms).

73. *See* HRW & ACLU, *supra* note 2, at 23 (mentioning that United States signed CEDAW in 1980); Rachael E. Seevers, Note, *The Politics of Gagging: The Effects of the Global Gag Rule on Domestic Participation and Political Advocacy in Peru*, 31 BROOK. J. INT'L L. 899, 907 n.55 (2006) (noting that United States is only industrialized nation that has not ratified CEDAW).

74. *See* Rebeca Rios-Kohn, *The Convention on the Rights of the Child: Progress and Challenges*, 5 GEO. J. ON FIGHTING POVERTY 139, 141 (1998) (stating that CRC is "most comprehensive and detailed international human rights charter to date" and is most effective mechanism for achieving significant improvements in children's lives); *see also* Stewart, *supra* note 11, at 162 (declaring that CRC is first binding international instrument to comprehensively address children's concerns).

75. *See* CRC, *supra* note 5, art. 1 (defining child as person under eighteen years old unless majority attained earlier under applicable State Party law).

76. *See id.* art. 3 (announcing that "the best interests of the child shall be a primary consideration" in all actions pertaining to children); *see also* RACHEL HODGKIN & PETER NEWELL, IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE

appropriate administrative, legislative, and other steps toward fully achieving the CRC's implementation.[77] Like the ICCPR and CEDAW, the CRC prohibits discrimination based on sex.[78] Children enjoy the right to freedom of speech, freedom of expression, and freedom of "thought, conscience, and religion" under the CRC.[79]

The CRC provides rights of particular importance to children deprived of their liberty. States Parties must take appropriate measures to protect children from abuse, injury, maltreatment, neglect, physical and mental violence, and sexual abuse and exploitation.[80] Articles 37, 39, and 40 specifically address the rights of children in conflict with the law. Article 37 mandates that States Parties treat detained children humanely and in accordance with children's age-specific needs, and prohibits torture and cruel, inhuman, or degrading treatment.[81] Article 39 requires States Parties to encourage the physical and psychological recovery and social reintegration of juvenile offenders and other child victims of abuse, exploitation, neglect, and torture or cruel, degrading, or inhuman treatment.[82] Article 40 establishes that States Parties must treat every child accused or convicted of a crime in a manner that promotes the child's "sense of dignity and self-worth," and must consider the child's age and reintegra-

---

CHILD 39-40 (2002) (explaining that "best interests" standard applies to various aspects of children's lives, including deprivation of liberty).

77. *See* CRC, *supra* note 5, art. 4 (mandating that States Parties take all appropriate administrative, legislative, and other measures to implement CRC's provisions); *see also* Caroline McHale, Note, *The Impact of U.N. Human Rights Commission Reform on the Ground: Investigating Extrajudicial Executions of Honduran Street Children*, 29 FORDHAM INT'L L.J. 812, 823-24 (2006) (mentioning that CRC requires States Parties to take all appropriate measures, including legislative and administrative action, to implement children's rights).

78. *See* CRC, *supra* note 5, art. 2 (providing that rights enumerated in CRC apply to all children without regard to sex and various other characteristics).

79. *See id.* arts. 12-14 (providing children's right to freedom of speech, freedom of expression, and freedom of religion, respectively).

80. *See id.* arts. 19 & 34 (requiring States Parties to prevent children's subjection to physical and mental violence, injury, abuse, neglect, maltreatment, and sexual abuse and exploitation).

81. *See id.* art. 37 (prohibiting torture and other cruel, degrading, or inhuman treatment of children; requiring that States Parties treat children "with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age").

82. *See id.* art. 39; *see also* HODGKIN & NEWELL, *supra* note 76, at 584-85 (explaining that children in conflict with law should be considered victims and that Article 39 applies to them).

tion into society.[83]

The Committee on the Rights of the Child ("CRC Committee") is the supervisory body responsible for States Parties' implementation of the CRC.[84] The CRC Committee is comprised of eighteen independent experts of "high moral standing" with recognized competence in children's rights.[85] States Parties are required to submit reports to the CRC Committee documenting their compliance with the CRC two years after ratification and every five years thereafter.[86] The reports should be comprehensive and self-critical.[87] In addition to government-written reports, the CRC Committee receives independent reports from academic institutions, inter-governmental organizations, the media, non-governmental organizations ("NGOs"), and U.N. agencies.[88] After reviewing the reports, the CRC Committee issues its "concluding observations," which summarize its concerns about the State Party's implementation of the CRC and note any improvements.[89] These recommendations, however, are not binding on States Parties.[90]

---

83. *See* CRC, *supra* note 5, art. 40.

84. *See id.* art. 43 (establishing CRC Committee to oversee States Parties' implementation of CRC provisions).

85. *See* Revaz, *supra* note 10, at 14 (explaining that CRC Committee is comprised of eighteen independent experts of "high moral standing" experienced in children's rights field); *see also* OHCHR, Committee on the Rights of the Child - Members, http://www.ohchr.org/english/bodies/crc/members.htm (last visited May 2, 2007) (noting that CRC Committee is comprised of eighteen independent experts of "high moral character and recognized competence in the field of human rights").

86. *See* CRC, *supra* note 5, art. 44.

87. *See* Revaz, *supra* note 10, at 14 (explaining that State Party reports to CRC Committee should be "comprehensive and self-critical" and include detailed statistical information); *see also* Rios-Kohn, *supra* note 74, at 150 (asserting that CRC Committee expects "comprehensive and self-critical" State Party reports).

88. *See* HODGKIN & NEWELL, *supra* note 76, at 638 (explaining that CRC Committee may invite U.N. agencies and "other competent bodies," including non-governmental organizations ("NGOs"), to offer expert advice on State Party reports); *see also* Revaz, *supra* note 10, at 14 (listing alternative sources of information that CRC Committee may consider in determining State Party's implementation of CRC).

89. *See* Revaz, *supra* note 10, at 14 (explaining that, in response to State Party reports, CRC Committee issues "concluding observations" that note positive changes and areas of concern in country's implementation of CRC); *see also* Rios-Kohn, *supra* note 74, at 150 (noting that CRC Committee issues Concluding Observations in which it identifies positive changes, notes areas in need of improvement, and provides recommendations to State Party).

90. *See* Revaz, *supra* note 10, at 15 (observing that CRC Committee has no power to enforce recommendations provided in its Concluding Observations); *see also* Stewart, *supra* note 11, at 163 (lamenting that CRC Committee's recommendations to States

The United States and Somalia are the only countries in the world that have not ratified the CRC.[91] Furthermore, the United States is the only country in the world that actively opposes the CRC.[92] The United States signed the CRC, however, and ratified the CRC's Optional Protocols on the sale of children, child prostitution, and child pornography, and on the involvement of children in armed conflicts.[93]

2. U.N. Juvenile Justice Standards

The U.N. has issued several international standards on juvenile justice, namely the Beijing Rules, the Riyadh Guidelines, and the Rules for the Protection of Juveniles.[94] While these standards are not binding, they provide guidance in interpreting and implementing the rights enumerated in the human rights treaties described above.[95] The CRC Committee has noted that the U.N. juvenile justice standards should be integrated into the CRC's implementation.[96]

Parties are not legally binding). *But see* HODGKIN & NEWELL, *supra* note 76, at 631 (emphasizing that CRC Committee assumes that States Parties will address Committee's recommendations in next State Party report); Stewart, *supra* note 11, at 163 (mentioning that, in spite of non-binding nature of CRC Committee's recommendations, they nonetheless "carry considerable weight").

91. *See* OHCHR, *supra* note 10 (documenting that United States and Somalia are only U.N. Member Nations that have not acceded to or ratified CRC); *see also* Roper v. Simmons, 543 U.S. 551, 576 (2005) (noting that United States and Somalia are only nations that have not ratified CRC).

92. *See* Jonathan Todres et al., *Overview*, *in* THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD, *supra* note 10, at 3 [hereinafter Todres, *Overview*]; *see also* Todres, Analyzing the Opposition, *supra* note 12, at 19 (noting that United States actively opposes efforts to recognize CRC as world's leading expression of children's rights).

93. *See* Revaz & Todres, *supra* note 10, at 294 (stating that United States ratified both Optional Protocols in 2002); Stewart, *supra* note 11, at 162 (stating that United States signed CRC in Feb. 1995).

94. *See* HRW & ACLU, *supra* note 2, at 24 (recognizing Beijing Rules, Riyadh Guidelines, and Rules for the Protection of Juveniles as standards protecting rights of detained children); *see also* HODGKIN & NEWELL, *supra* note 76, at 592 (asserting that CRC Committee regards Beijing Rules, Riyadh Guidelines, and Rules for the Protection of Juveniles as relevant for implementation of Article 40 of CRC).

95. *See* HRW & ACLU, *supra* note 2, at 24 (clarifying that, although non-binding, U.N. juvenile justice standards provide guidance in interpreting international human rights treaties); *see also* HODGKIN & NEWELL, *supra* note 76, at 592-93 (noting that CRC Committee encourages States Parties to consider juvenile justice standards in implementation of CRC).

96. *See CRC Committee Recommendation*, *supra* note 7 (documenting CRC Committee's recognition that implementation of Articles 37, 39, and 40 of CRC must be considered in conjunction with Beijing Rules, Riyadh Guidelines, and Rules for the Protection

a. U.N. Rules for the Protection of Juveniles Deprived of their Liberty ("Rules for the Protection of Juveniles")

The Rules for the Protection of Juveniles establish standards protecting juveniles deprived of their liberty.[97] A "juvenile" is a person under the age of eighteen.[98] "Deprivation of liberty" is any form of detention, incarceration, or custodial placement by public order in any setting in which the juvenile is not free to leave.[99] The Rules for the Protection of Juveniles apply to all types and forms of facilities holding juveniles.[100] These standards call for governments to respect the human rights of children deprived of their liberty,[101] and provide that juveniles in state custody do not lose their civil, cultural, economic, political, or social rights under national and international law.[102]

The Rules for the Protection of Juveniles prohibit the use of physical restraints except in extraordinary circumstances where the child poses a risk of self-injury, injury to others, or serious destruction of property, and all other control methods have been exhausted and have failed.[103] When physical restraints are used, they must not humiliate or degrade the child.[104] Like other international human rights instruments, the Rules for the Protection of Juveniles prohibit cruel, inhuman, or degrading treatment.[105] The Rules for the Protection of Juveniles recommend that detention facilities adopt standards concerning: (1) conduct that constitutes a disciplinary offense; (2) the type and duration of penalties that may be imposed; (3) the authority empowered to impose such sanctions; and (4) the authority compe-

---

of Juveniles); *see also General Comment No. 10, supra* note 7, ¶ 3 (affirming that States Parties must integrate juvenile justice standards as part of comprehensive CRC implementation).

97. *See* Rules for the Protection of Juveniles, *supra* note 5, ¶ 3.

98. *See id.* ¶ 11(a).

99. *See id.* ¶ 11(b).

100. *See id.* ¶ 15 (stating that Rules for the Protection of Juveniles apply to all types and forms of juvenile custody, including detention and institutional settings and during arrest and pre-trial procedures).

101. *See id.* ¶ 12.

102. *See id.* ¶ 13 (prohibiting governments from depriving juveniles in state custody of civil, cultural, economic, political, or social rights consistent with deprivation of liberty under national and international law).

103. *See id.* ¶ 64.

104. *See id.*

105. *See id.* ¶ 67.

tent to consider appeals of punishments.[106]

The Rules for the Protection of Juveniles recommend that an independent monitor inspect the conditions of detention facilities[107] and submit a report on the findings.[108] According to these standards, every detained juvenile should have the right to make requests or complaints to the appropriate authorities without censorship.[109] The Rules for the Protection of Juveniles recommend the establishment of an independent office or ombudsman to receive and investigate juveniles' complaints.[110]

b. U.N. Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules")

The Beijing Rules set forth standards for the administration of juvenile justice.[111] The Beijing Rules emphasize that one of the most important objectives of any juvenile justice system is the promotion of juveniles' well-being.[112] The Beijing Rules state that girls in conflict with the law have unique needs and problems that merit special attention, and declare that girl offenders must receive fair treatment equal to that of male juvenile offenders.[113]

c. U.N. Guidelines for the Prevention of Juvenile Delinquency ("Riyadh Guidelines")

The Riyadh Guidelines advise governments on preventing children's involvement with juvenile justice systems.[114] The Ri-

106. *See id.* ¶ 68 (establishing standards for punishing disciplinary offenses in facilities holding juveniles).

107. *See id.* ¶ 72 (recommending that independent inspectors have authority to conduct regular and unannounced inspections and have unfettered access to all employees, juveniles, and records in detention facilities).

108. *See id.* ¶ 74 (suggesting that inspector be required to submit report on findings, including evaluation of detention facility's compliance with rules and national law, and recommendations to ensure compliance).

109. *See id.* ¶¶ 75-76.

110. *See id.* ¶ 77.

111. *See* Beijing Rules, *supra* note 5, ¶ 2.3 & Commentary (stating that each national jurisdiction must establish laws, provisions, and rules governing juvenile offenders and juvenile justice bodies and institutions, and that Beijing Rules provide minimum standards applicable to all juveniles and juvenile justice systems).

112. *See id.* ¶ 5.1 & Commentary (declaring that juvenile justice systems must encourage juveniles' well-being).

113. *See id.* ¶ 26.4.

114. *See* Riyadh Guidelines, *supra* note 5, ¶¶ 1-6 (articulating principles governments should follow to prevent juvenile delinquency); *see also* HODGKIN & NEWELL,

yadh Guidelines instruct governments to enact and implement specific laws and procedures to promote and protect children's rights and welfare.[115] These standards condemn the subjection of children to "harsh or degrading correction or punishment" in any setting.[116] Like the Rules for the Protection of Juveniles, the Riyadh Guidelines recommend that governments establish an independent office or ombudsman to protect children's rights, supervise the implementation of the Beijing Rules, Riyadh Guidelines, and Rules for the Protection of Juveniles, and regularly publish reports documenting the government's progress in implementing these instruments.[117]

II. *EVALUATING THE POTENTIAL IMPACT OF U.S. RATIFICATION OF THE CRC AND ASSESSING TWO PROPOSALS TO END THE ABUSE OF U.S. DETAINED GIRLS*

Part II of this Note outlines reasons for and against U.S. ratification of the CRC. This Part explains that, in spite of near universal ratification of the CRC, States Parties have not fully implemented the U.N.'s juvenile justice standards. Part II concludes with a review of two proposals to address the physical and sexual abuse of detained girls: (1) creating a national ombudsman for children's rights; and (2) establishing a U.N.-appointed special representative on violence against children.

A. *Evaluating Arguments For and Against U.S. Ratification of the CRC*

The United States is the only country in the world that actively opposes the CRC,[118] yet ironically it proposed more provisions to the CRC during the drafting stage than any other country.[119] U.S. law is already largely in compliance with the

---

supra note 76, at 596 (stating that Riyadh Guidelines set forth procedures to prevent juvenile delinquency).

115. *See* Riyadh Guidelines, *supra* note 5, ¶ 52.

116. *See id.* ¶ 54 (declaring that no child should receive "harsh or degrading correction or punishment" at home, school, or any other setting).

117. *See id.* ¶ 57.

118. *See* Todres, *Overview*, *supra* note 92, at 3 (stating that United States is only government that actively opposes CRC); *see also* Todres, *Analyzing the Opposition*, *supra* note 12, at 19 (noting that United States actively opposes efforts to recognize CRC as world's leading expression of children's rights).

119. *See* Todres, *Overview*, *supra* note 92, at 3; *see also* T. Jeremy Gunn, *The Religious*

CRC,[120] but advocates assert that ratification would provide an impetus for the United States to examine and improve its policies on children.[121] They also argue that ratification would empower the United States to take a role in improving other countries' compliance with the CRC.[122] The CRC, unlike other U.N. treaties, is particularly remarkable for its protection of the girl child in that it provides equal rights and protection to boys and girls.[123] The CRC has influenced many States Parties to improve their juvenile justice practices to better protect children in conflict with the law, including establishing grievance procedures and independent monitoring bodies to protect the rights of detained children.[124]

Right and the Opposition to U.S. Ratification of the Convention on the Rights of the Child, 20 EMORY INT'L L. REV. 111, 112 n.6 (2006) (observing that delegations from U.S. State Department actively participated in drafting all but two of CRC's articles and were instrumental in inclusion of four articles).

120. *See* Stewart, *supra* note 11, at 166 (asserting that CRC's fundamental provisions accord with basic principles of U.S. federal, state, and local law); *see also* Kerri Ann Law, Note, *Hope for the Future: Overcoming Jurisdictional Concerns to Achieve United States Ratification of the Convention on the Rights of the Child*, 62 FORDHAM L. REV. 1851, 1853-54 (1994) (stating that U.S. law's conformity with CRC is greater than that of most ratifying nations' laws).

121. *See* Stewart, *supra* note 11, at 163 (explaining that many advocates for U.S. ratification believe that CRC would provide powerful mechanism for requiring all levels of U.S. government to improve their treatment of children); *see also* Law, *supra* note 120, at 1876 (arguing that U.S. ratification of CRC would force United States to examine state of U.S. children more often). *But see* Stewart, *supra* note 11, at 165 (recognizing that CRC "is not a panacea" and that U.S. ratification would not necessarily mean that United States would take leadership role in advocating for children's rights internationally).

122. *See* Stewart, *supra* note 11, at 164 (arguing that U.S. ratification would stimulate efforts to improve conditions for children in other countries); Campaign for U.S. Ratification of the Convention on the Rights of the Child, *supra* note 11 (noting that without ratification, United States cannot participate in advising, evaluating, and monitoring other nations' compliance with CRC).

123. *See* Susan O'Rourke von Struensee, *Violence, Exploitation and Children: Highlights of the United Nations Children's Convention and International Response to Children's Human Rights*, 18 SUFFOLK TRANSNAT'L L. REV. 589, 608 (1995) (observing that Article 2 provides that "all rights to survival, protection, and development" apply equally to girls and boys). *See generally* Cynthia Price Cohen, *The United Nations Convention on the Rights of the Child: A Feminist Landmark*, 3 WM. & MARY J. WOMEN & L. 29 (1997) (commenting that CRC provides equal protection to boys and girls).

124. *See* Jaap E. Doek, *The Protection of Children's Rights and the United Nations Convention on the Rights of the Child: Achievements and Challenges*, 22 ST. LOUIS U. PUB. L. REV. 235, 245-46 (2003) (explaining that many States Parties to CRC have modified their juvenile justice practices to better protect children accused of crimes, and have established grievance procedures and independent institutions to monitor implementation of children's rights); *see also* Campaign for U.S. Ratification of the Convention on the

Opposition to U.S. ratification of the CRC is primarily based on two concerns: (1) that ratifying the CRC would undermine parents' authority in raising their children; and (2) that ratifying the CRC would impair U.S. sovereignty and the country's federalist system.[125] Some commentators deem the CRC as "anti-parent," with U.S. religious conservatives demonstrating particularly vigorous resistance.[126] These groups denounce the CRC, asserting that the treaty undermines traditional U.S. and religious morals and family values.[127] They argue that ratification would allow children to sue their parents, hinder parents' ability to teach the religion of their choice to their children, interfere with parental choice in their children's education, and permit children to obtain abortions without parental consent.[128]

In response to these criticisms, CRC proponents point out that the language of the CRC places great emphasis on the role of parents in children's upbringing.[129] Numerous provisions in

---

Rights of the Child, http://www.childrightscampaign.org/crcabout.htm (last visited May 11, 2007) (noting that many nations, including Bolivia, Cambodia, Chad, El Salvador, Ghana, Malaysia, and Romania, have reformed their criminal law by enacting new children's justice codes).

125. *See* Todres, *Analyzing the Opposition*, *supra* note 12, at 20 (stating that U.S. opposition to CRC ratification is based on fears that CRC would undermine role of parents and family in raising children and that CRC would weaken U.S. sovereignty); Law, *supra* note 120, at 1853 (mentioning that major concern about ratification is that many rights provided by CRC fall under U.S. state and not federal jurisdiction).

126. *See* Todres, *Analyzing the Opposition*, *supra* note 12, at 20 (stating that opponents to ratification believe CRC is "anti-parent"); Gunn, *supra* note 119, at 112 (explaining that U.S. conservative Christians, also referred to by some as "religious right," have strongly opposed CRC and have stymied ratification).

127. *See* Gunn, *supra* note 119, at 121-22 (describing U.S. religious conservatives' arguments that ratifying CRC would destroy traditional two-parent married family, religions that stress traditional beliefs about marriage and sexual morality, and legal and social structures that support two-parent married families and religion); *see also* Jennifer Butler, *The Christian Right Coalition and the U.N. Special Session on Children: Prospects and Strategies*, 8 INT'L J. CHILD. RTS. 351, 362 (2000) (explaining that U.S. religious conservatives have attacked CRC as threat to parents' right to control their children's educational, moral, and religious development).

128. *See* Todres, *Analyzing the Opposition*, *supra* note 12, at 23-24; *see also* Gunn, *supra* note 119, at 123-24 (discussing concerns of U.S. religious conservative advocacy groups that CRC would preclude parents from controlling their children's exposure to pornography, what their children watch on television, and which religions they learn).

129. *See* Todres, *Analyzing the Opposition*, *supra* note 12, at 20-27 (emphasizing that numerous CRC provisions support parents' role in developing children); *see also* Barbara Bennett Woodhouse, *The Family-Supportive Nature of the U.N. Convention on the Rights of the Child*, *in* THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD, *supra* note 10, at 41-46 (pointing out that various CRC provisions support parents' and family's role in children's lives).

the CRC support the responsibilities of parents in raising their children. The CRC's preamble declares that the family, as the fundamental unit of society and the natural environment for children's growth and happiness, deserves protection and assistance to perform its responsibilities.[130] Article 3, which establishes the "best interests of the child" standard for children's rights, also provides that States Parties must take parents' rights into account.[131] Article 5 requires that States Parties respect the rights of parents in helping their children exercise the rights granted in the CRC.[132] Article 7 establishes children's right to be raised by their parents,[133] and Article 9 provides that children not be separated from their parents except in exceptional circumstances.[134]

CRC advocates refute arguments that the CRC accords children the rights to sue their parents, practice a religion their parents oppose, choose their own school, and obtain an abortion. Advocates for U.S. ratification note that no part of the CRC specifically enumerates a child's right to sue his or her parents.[135] Although Article 14 establishes children's right to freedom of religion, this right is qualified in the same provision, which also

---

130. *See* CRC, *supra* note 5, pmbl.; *see also* Todres, *Analyzing the Opposition*, *supra* note 12, at 20 (quoting CRC preamble in affirming that CRC protects rights of parents and family).

131. *See* CRC, *supra* note 5, art. 3 (providing that States Parties must ensure children's well-being, taking into account parental rights and duties); *see also* Todres, *Analyzing the Opposition*, *supra* note 12, at 21-22 (asserting that Article 3 requires States Parties to give proper regard to parents' rights and responsibilities, and that United States would be required to do so if it ratified CRC).

132. *See* CRC, *supra* note 5, art. 5 (declaring that States Parties must respect responsibilities, rights, and duties of parents to guide children in exercise of rights afforded by CRC); *see also* Todres, *Analyzing the Opposition*, *supra* note 12, at 21 (quoting Article 5 as recognizing parents' responsibilities, rights, and duties).

133. *See* CRC, *supra* note 5, art. 7 (providing children right to know and be cared for by their parents); *see also* Todres, *Analyzing the Opposition*, *supra* note 12, at 22 (arguing that placement of children's right to be raised by their parents in Article 7 just after "umbrella provisions" of Articles 1-5 reinforces right's importance).

134. *See* CRC, *supra* note 5, art. 9 (requiring that child not be separated from his or her parents, except when authorities subject to judicial review and acting in accordance with applicable law deem separation in child's best interest); *see also* Todres, *Analyzing the Opposition*, *supra* note 12, at 22 (opining that Article 9 supports CRC's position that children's best chance at developing to their full potential is under parents' direction).

135. *See* Todres, *Analyzing the Opposition*, *supra* note 12, at 24 (noting that CRC does not provide children right to sue their parents and that any action of child against his or her parents must be grounded in national or state law); *see also* Woodhouse, *supra* note 129, at 40 (contending that CRC does not allow children to sue their parents).

requires States Parties to respect parents' rights and responsibilities in guiding their children's exercise of this right.[136] According to CRC proponents, the CRC does not interfere with parental choice in education, and U.S. ratification would not prevent parents from enrolling their children in private schools.[137] Advocates for ratification also note that the CRC takes no position on abortion.[138] The preamble to the CRC also recognizes the importance of cultural values and traditions in children's development.[139]

The second principal argument that opponents to U.S. ratification of the CRC make is that ratification would imperil U.S. sovereignty.[140] In spite of sovereignty concerns, the United States has ratified several international human rights treaties.[141] Under the Supremacy Clause of the U.S. Constitution, ratified

---

136. *See* CRC, *supra* note 5, art. 14 (requiring respect for children's right to freedom of religion, but also respect for parents' rights and duties to direct their children's exercise of right consistently with children's "evolving capacities"); *see also* Todres, *Analyzing the Opposition*, *supra* note 12, at 24 (citing Article 14 in refuting argument that U.S. ratification of CRC would prevent parents from teaching their children religion of parents' choice).

137. *See* Todres, *Analyzing the Opposition*, *supra* note 12, at 25 (affirming that CRC does not undermine parents' authority to make decisions about their children's education, and does not prevent parents from enrolling their children in private schools); *see also* CRC, *supra* note 5, art. 29 (stating that Articles 28 and 29 are not intended to interfere with individual and governmental liberty to create and direct educational institutions).

138. *See* Todres, *Analyzing the Opposition*, *supra* note 12, at 26 (arguing that CRC takes neutral position on abortion); *see also* Jonathan Todres & Louise N. Howe, *What the Convention on the Rights of the Child Says (and Doesn't Say) About Abortion and Family Planning*, *in* THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD, *supra* note 10, at 163 (pointing out that while CRC maintains neutral position on abortion, various States Parties view CRC as either for or against abortion).

139. *See* CRC, *supra* note 5, pmbl. ("Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child"); *cf.* Jaap E. Doek, *The U.N. Convention on the Rights of the Child: Some Observations on the Monitoring and the Social Context of Its Implementation*, 14 U. FLA. J.L. & PUB. POL'Y 125, 131 (2003) (emphasizing importance of cultural and social differences between countries, and that CRC Committee considers these differences when reviewing State Party reports).

140. *See* Todres, *Analyzing the Opposition*, *supra* note 12, at 27-30; *see also* Gunn, *supra* note 119, at 126 (observing that opponents of ratification view CRC as threat to U.S. sovereignty).

141. *See* Todres, *Analyzing the Opposition*, *supra* note 12, at 29 (noting that United States has ratified CAT, Convention on Prevention and Punishment on the Crime of Genocide, ICCPR, and International Convention on Elimination of All Forms of Racial Discrimination); *see also* Revaz & Todres, *supra* note 10, at 294 (stating that United States ratified both Optional Protocols to CRC).

treaties become the "supreme law of the land" and supersede contradicting federal and state laws.[142] The United States has shown reluctance toward overriding existing federal and state laws, however, and has instead customarily made human rights treaties non-self-executing.[143] A non-self-executing treaty requires the U.S. Congress to enact implementing legislation for the treaty to take effect.[144] Without implementing legislation, U.S. courts cannot give effect to the treaty and U.S. sovereignty remains unaffected.[145] But even if the United States ratified the CRC as a non-self-executing treaty, the nation would still have an obligation to quickly enact implementing legislation.[146] The United States may also ratify the CRC with reservations, as it has done previously with international human rights treaties,[147] but

142. *See* U.S. CONST. art. VI, cl. 2 ("and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land"); *see also* Stewart, *supra* note 11, at 163 (noting that, under Article VI of U.S. Constitution, ratified treaties become "Supreme Law of the Land" and override inconsistent federal and state law).

143. *See* Gunn, *supra* note 119, at 127 & n.60 (explaining that United States has made human rights treaties non-self-executing since 1950s, although scholars note that U.S. Constitution does not suggest that human rights treaties are non-self-executing); *see also* Law, *supra* note 120, at 1853 (stating that, although U.S. federal government has authority to ratify treaties and thus override existing law, U.S. Senate has been reluctant to infringe on states' powers through exercise of its treaty power).

144. *See* Todres, *Analyzing the Opposition*, *supra* note 12, at 29; *see also* Jonathan Todres, *Emerging Limitations on the Rights of the Child: The U.N. Convention on the Rights of the Child and its Early Case Law*, 30 COLUM. HUM. RTS. L. REV. 159, 184 (1998) [hereinafter Todres, *Emerging Limitations*] (noting that non-self-executing treaty is not given effect domestically without implementing legislation of U.S. Congress).

145. *See* Todres, *Analyzing the Opposition*, *supra* note 12, at 29 (clarifying that making CRC non-self-executing would prevent any international or other authority from infringing upon U.S. sovereignty); Todres, *Emerging Limitations*, *supra* note 144, at 184 (explaining that without implementing legislation, U.S. courts will not give effect to non-self-executing treaty).

146. *See* Todres, *Emerging Limitations*, *supra* note 144, at 186 (pointing out that countries have obligation to promptly enact implementing legislation on non-self-executing treaties to enable countries to perform their responsibilities under treaty); *see also* Todres, *Analyzing the Opposition*, *supra* note 12, at 29 (mentioning that U.S. ratification of CRC as non-self-executing treaty would still require United States to implement CRC's provisions). *But see* Linda A. Malone, *The Effect of U.S. Ratification as a "Self-Executing" or as a "Non-Self-Executing" Treaty*, *in* THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD, *supra* note 10, at 35 (explaining that U.S. Senate routinely ratifies human rights treaties as non-self-executing but fails to enact implementing legislation).

147. *See* CRC, *supra* note 5, art. 51 (providing that States Parties may submit reservations to CRC); Todres, *Analyzing the Opposition*, *supra* note 12, at 29 (affirming that United States has ratified human rights treaties with reservations, understandings, and declarations previously, including CAT, Convention on Prevention and Punishment on the Crime of Genocide, ICCPR, and International Convention on Elimination of All

the CRC prohibits reservations that are incompatible with its "object and purpose."[148] In fact, the CRC Committee has indicated that States Parties may make no reservations at all to the CRC's most fundamental provisions.[149]

Related to the sovereignty argument is the position that U.S. ratification of the CRC would disrupt the U.S. system of federalism.[150] Under federalism, the U.S. federal government possesses certain enumerated powers and the remaining powers are left to the states.[151] Many of the areas that the CRC encompasses, such as juvenile justice, fall under state and not federal jurisdiction in the United States.[152] Ratification supporters note that the CRC does not require implementation of federal legislation to comply with the treaty, meaning that the states could still retain power over areas traditionally left to their control.[153] On the other

---

Forms of Racial Discrimination); *see also* Stewart, *supra* note 11, at 164 (noting that President Clinton stated CRC ratification would have to be conditioned upon "reservations and understandings"); Todres, *Emerging Limitations*, *supra* note 144, at 188 (pointing out that reservations are important means of diminishing impact of human rights treaties on States Parties, and that reservations to CRC generally have not significantly curtailed CRC's effectiveness).

148. *See* CRC, *supra* note 5, art. 51 (prohibiting reservations incompatible with CRC's "object and purpose"); *see also* Stewart, *supra* note 11, at 164 (observing that international law generally bars reservations that conflict with treaty's object and purpose).

149. *See* Stewart, *supra* note 11, at 164 & n.37 (mentioning that CRC Committee opposes reservations of any kind to Articles 2 (anti-discrimination), 3 (best interests of child), 4 (obligation to implement CRC standards), 6 (right to life), and 12 (freedom of expression)); *see also* Rios-Kohn, *supra* note 74, at 143, 146 (describing Articles 2, 3, 6, and 12 as "soul of the treaty"; asserting that these provisions "capture the spirit of the treaty" and that States Parties must fully respect them).

150. *See* Todres, *Analyzing the Opposition*, *supra* note 12, at 29 (stating argument that ratification of any human rights treaty would violate principles of federalism); *see also* Law, *supra* note 120, at 1853 (noting that one of opponents' main concerns is that CRC covers rights within U.S. states' jurisdiction rather than federal jurisdiction).

151. *See* U.S. CONST. amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."); *see also* Curtis A. Bradley, *The Treaty Power and American Federalism*, 97 MICH. L. REV. 390, 392 (1998) (affirming that U.S. federal government has "limited, enumerated powers" and that under Tenth Amendment of U.S. Constitution, powers not delegated to federal government are left to states).

152. *See* Law, *supra* note 120, at 1866-67 (explaining that many CRC provisions cover areas traditionally regulated by U.S. states, including juvenile justice); *see also* Stewart, *supra* note 11, at 176 (noting that CRC encompasses areas traditionally under U.S. state governments' jurisdiction).

153. *See* Cathy L. Nelson, *U.S. Ratification of the U.N. Convention on the Rights of the Child: Federalism Issues*, *in* THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD, *supra* note 12, at 88 (pointing out that CRC does not require national legislation to imple-

hand, the CRC does oblige national governments to ensure compliance with the treaty's provisions[154] and the CRC Committee favors a centralized approach to implementation.[155]

Another argument against U.S. ratification of the CRC is that the CRC directly conflicts with U.S. law in certain respects, particularly in the area of juvenile justice.[156] One example of a conflict had been that the United States permitted the juvenile death penalty while Article 37 of the CRC prohibits it.[157] But in 2005, the U.S. Supreme Court decision *Roper v. Simmons* outlawed the practice, thus eliminating a significant obstacle to U.S. ratification of the CRC.[158] The Court observed that the United States stood alone in officially sanctioning the juvenile death penalty.[159] The Court cited Article 37 and noted that no State Party to the CRC has entered a reservation to the provision

---

ment its provisions); *see also* CRC, *supra* note 5, art. 4 (requiring that States Parties take all appropriate administrative, legislative, and other measures to implement CRC, without mentioning which level of government must enact legislation to ensure State Party's compliance with CRC).

154. *See* Stewart, *supra* note 11, at 176 (noting that upon ratification, U.S. federal government would have ultimate responsibility to ensure United States' compliance with CRC's provisions); *see also* Nelson, *supra* note 153, at 88 (mentioning that State Party's national government is obliged to implement CRC's provisions).

155. *See* Stewart, *supra* note 11, at 176 (stating that CRC Committee has urged States Parties to institute coordinated national implementation measures, and has criticized Republic of Ireland for its "somewhat fragmented approach" to implementation while praising United Kingdom for enacting national Children's Act); *see also* CRC Committee, *General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42, and 44, para. 6)*, ¶¶ 28-29, U.N. Doc. CRC/GC/2003/5 (Nov. 27, 2003) (stressing that, to promote children's rights, governments must develop "comprehensive national strategy").

156. *Compare* CRC, *supra* note 5, art. 37 (prohibiting capital punishment and life imprisonment without possibility of release for juvenile offenders) *with* Evelynn Brown Remple & Mark E. Wojcik, *Capital Punishment and Life Sentences for Juvenile Offenders*, *in* THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD, *supra* note 12, at 278, 285-86 (observing that United States previously allowed juvenile death penalty and currently permits life imprisonment without possibility of parole for juvenile offenders).

157. *See* Todres, *Analyzing the Opposition*, *supra* note 12, at 29 (noting observation of U.S. supporters of juvenile death penalty that CRC prohibition conflicted with U.S. legal practices); CRC, *supra* note 5, art. 37 (prohibiting capital punishment for offenses committed by persons under eighteen years old).

158. *See* Roper v. Simmons, 543 U.S. 551 (2005) (juvenile death penalty violates U.S. Constitution); Todres, *Analyzing the Opposition*, *supra* note 12, at 30 (mentioning that *Roper* removed major obstacle to U.S. ratification of CRC); *see also* Remple & Wojcik, *supra* note 156, at 279 (explaining that *Roper* decision moots arguments against ratification related to U.S. approval of juvenile death penalty).

159. *See Roper*, 543 U.S. at 575 (observing that United States was only country that officially sanctioned juvenile death penalty).

prohibiting the juvenile death penalty.[160] The Court's decision, however, rested not on international law, but on the Court's interpretation of the Eighth Amendment of the U.S. Constitution, which prohibits cruel and unusual punishment.[161] While its ruling rested on U.S. constitutional interpretation, the Court noted that it has previously referred to other nations' laws and international authorities in its interpretation of the Eighth Amendment and acknowledged "the overwhelming weight of international opinion against the juvenile death penalty."[162] The Court commented that recognizing international opinion in no way lessens the Court's "fidelity" to the U.S. Constitution and its history.[163]

U.S. law is still in conflict with Article 37 in that the provision also prohibits life imprisonment without the possibility of parole for juvenile offenders, while the United States continues to allow this practice.[164] The United States is one of the few countries in the world that sentences juveniles to life sentences of imprisonment.[165] In ratifying the CRC, the United States

160. *See id.* at 576 (noting that Article 37 prohibits capital punishment of juvenile offenders and that no State Party to CRC has entered reservation to it).

161. *See id.* at 575 (reasoning that United States' status as sole country officially permitting juvenile death penalty was not controlling because interpreting Eighth Amendment's prohibition of "cruel and unusual punishments" remains Court's responsibility); *see also* Remple & Wojcik, *supra* note 156, at 284 (asserting that Court correctly concluded that other countries' practices did not control Court's holding).

162. *See Roper*, 543 U.S. at 575, 578 (noting that Court has referenced other countries' laws and international authorities in interpreting Eighth Amendment; recognizing "overwhelming weight of international opinion against the juvenile death penalty").

163. *See id.* at 578 ("It does not lessen our fidelity to the Constitution or our pride in its origins to acknowledge that the express affirmation of certain fundamental rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage of freedom."); *see also id.* at 604 (O'Connor, J., dissenting) (observing that, for nearly fifty years, Court has drawn upon other nations' and international law to ascertain "evolving standards of decency" in interpreting Eighth Amendment). *But see id.* at 608 (Scalia, J., dissenting) (disputing that majority of Court Justices and "like-minded foreigners" should determine meaning of Eighth Amendment).

164. *Compare* CRC, *supra* note 5, art. 37 (prohibiting life imprisonment without possibility of release for offenses committed before attaining eighteen years of age) *with* AMNESTY INT'L & HRW, THE REST OF THEIR LIVES: LIFE WITHOUT PAROLE FOR CHILD OFFENDERS IN THE UNITED STATES 94-100 (2005), *available at* http://hrw.org/reports/2005/us1005/TheRestofTheirLives.pdf (explaining that U.S. federal and state law permits life imprisonment without parole for juvenile offenses in violation of international human rights law).

165. *See* Remple & Wojcik, *supra* note 156, at 288 (observing that United States is among few countries that sanction life imprisonment without possibility of parole for juvenile offenders); *see also* AMNESTY INT'L & HRW, *supra* note 164, at 5 (finding that in survey of 154 countries, 132 reject life imprisonment without parole for juvenile offenders).

could enter a reservation to the provision prohibiting life sentences without parole for juvenile offenders, but such a reservation would likely face international disapproval.[166]

Opponents of the CRC also argue that the CRC's provisions are duplicative of rights that other U.N. treaties grant to children.[167] Proponents of U.S. ratification counter that the CRC is the most comprehensive international human rights instrument for children and provides special rights and recognition to children that other international human rights treaties do not afford.[168] In addition, some scholars believe that while international human rights agreements are important, they are primarily intended for other countries, not the United States.[169] Yet in certain areas, the United States has one of the worst human rights records among developed nations—it has one of the highest infant mortality rates and rates of child deaths caused by abuse, maltreatment, and neglect among industrialized countries, and approximately one of every six children lives in pov-

166. *See* Stewart, *supra* note 11, at 180 (explaining that international community would likely disapprove of U.S. reservation to CRC prohibition of life imprisonment without parole for juvenile offenders as contravening object and purpose of CRC); *see also* Remple & Wojcik, *supra* note 156, at 279 (pointing out that all other countries disapproved of U.S. reservation to ICCPR's prohibition of juvenile death penalty).

167. *See* Marc D. Seitles, *Effect of the Convention on the Rights of the Child upon Street Children in Latin America: A Study of Brazil, Columbia, and Guatemala*, 16 BUFF. PUB. INT. L.J. 159, 170-71 (1997) (noting that most frequent objection to CRC is that other U.N. treaties cover children's rights and CRC is thus unnecessary); *see also* Merle H. Weiner, *Beyond Other Treaties: The U.N. Convention on the Rights of the Child and the Value of "A Dedicated Line"*, *in* THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD, *supra* note 10, at 66-67 (observing that other international human rights treaties explicitly and implicitly mention children's rights).

168. *See* Seitles, *supra* note 167, at 166-67 (comparing CRC to ICCPR and International Covenant on Economic, Social and Cultural Rights ("ICESCR"), and illustrating that CRC provides more comprehensive protection to children than either of those treaties); *see also* Doek, *supra* note 139, at 127 (noting that CRC provides civil, classic, cultural, economic, political, and social rights to children that are either not contained in or more specific and detailed than those provided by ICCPR and ICESCR); Stewart, *supra* note 11, at 161-62 (stating that CRC is principal instrument providing "special recognition and protection" to children under international human rights law and is first binding international agreement that comprehensively addresses children's rights).

169. *See* Todres, *Analyzing the Opposition*, *supra* note 12, at 30-31 (explaining that some believe U.S. Constitution provides sufficient protection of human rights and thus international human rights treaties are not primarily intended for United States); *see also* Catherine Powell, *Dialogic Federalism: Constitutional Possibilities for Incorporation of Human Rights Law in the United States*, 150 U. PA. L. REV. 245, 259 (2001) (positing that some U.S. judges disregard international law because U.S. populace does not regard international standards as relevant to interpretation of U.S. law).

erty.[170]

B. *Two Proposals to Address the Abuse of Detained Girls*

Despite near universal ratification of the CRC, the CRC Committee notes that States Parties have failed to effectively implement the CRC's juvenile justice provisions.[171] The CRC Committee has expressed concern that States Parties have not implemented a comprehensive policy to address the administration of juvenile justice.[172] The CRC Committee also stresses that the U.N. juvenile justice standards—the Beijing Rules, Riyadh Guidelines, and the Rules for the Protection of Juveniles—must be integrated into States Parties' implementation of the CRC.[173]

The abuse of girls in juvenile detention facilities is an example of countries' failure to effectively implement the CRC's juvenile justice provisions and the U.N. juvenile justice standards.[174] NGOs cite the lack of independent monitoring in facilities hold-

---

170. *See* Todres, *Analyzing the Opposition*, *supra* note 12, at 31 (noting that U.S. has one of highest infant mortality rates and one of highest rates of child deaths caused by abuse, maltreatment, and neglect among developed countries, and that one of every six children lives in poverty, totaling approximately 11.6 million children); *see also* Stewart, *supra* note 11, at 161 (pointing out that U.S. children suffer from high mortality rates and lack adequate educational opportunities and health care, and that twenty percent of U.S. children live below national poverty line).

171. *See CRC Committee Recommendation*, *supra* note 7 (lamenting that in all regions of world States Parties have failed to implement CRC's juvenile justice provisions into national law or practice); *see also General Comment No. 10*, *supra* note 7, ¶ 1 (commenting that States Parties "still have a long way to go" in attaining full compliance with CRC's juvenile justice provisions).

172. *See CRC Committee Recommendation*, *supra* note 7 (noting that CRC's juvenile justice provisions are frequently not reflected in States Parties' national legislation or practice, and urging States Parties to take all appropriate administrative, legislative, and other steps to achieve full compliance with CRC and international juvenile justice standards); *see also General Comment No. 10*, *supra* note 7, ¶ 3 (stressing that CRC requires States Parties to establish comprehensive juvenile justice policy); Rios-Kohn, *supra* note 74, at 155 (mentioning CRC Committee's concern that, especially in juvenile justice area, States Parties have not done enough to "harmonize national legislation" with CRC and incorporate CRC principles of best interests of child, non-discrimination, and right of child to be heard into domestic law).

173. *See CRC Committee Recommendation*, *supra* note 7 (emphasizing that CRC must be considered in conjunction with Beijing Rules, Riyadh Guidelines, and Rules for the Protection of Juveniles); *see also General Comment No. 10*, *supra* note 7, ¶ 3 (encouraging States Parties to integrate Beijing Rules, Riyadh Guidelines, and Rules for the Protection of Juveniles into comprehensive national juvenile justice policy).

174. *See General Comment No. 10*, *supra* note 7, ¶ 28(c) (citing violence against children in conflict with law as example of States Parties' failure to effectively implement CRC juvenile justice provisions and U.N. juvenile justice standards). *See generally* Sharon Detrick, *The Theme Day of the Committee on the Rights of the Child on the Administration of*

ing juveniles as one of the principal causes for the physical and sexual abuse of detained girls.[175] A lack of transparency pervades facilities detaining children.[176] Staff members in these institutions enjoy impunity from punishment because they retaliate against children who complain about mistreatment, thus deterring many detained children from filing grievances.[177] Establishing a national ombudsman for children's rights and a U.N. special representative on violence against children are two proposals to improve independent monitoring in juvenile detention facilities.

1. Proposal 1: National Ombudsman for Children's Rights

An independent national human rights institution ("NHRI"),[178] sometimes called an ombudsman,[179] may take sev-

---

Juvenile Justice, 4 INT'L J. CHILD. RTS. 95 (1996) (discussing State Parties' failure to comply with CRC juvenile justice provisions and U.N. juvenile justice standards).

175. *See* HRW & ACLU, *supra* note 2, at 7 (commenting that lack of independent oversight is important cause for abuse of girls in New York State's juvenile prisons for girls); *see also* CCC, *supra* note 20, at 23-24 (recommending that New York City and New York State develop independent monitoring systems to assure quality of care provided to detained girls).

176. *See* Detrick, *supra* note 174, at 97 (noting that participants at Nov. 1995 theme day of CRC Committee recommended measures to end lack of transparency that prevails in facilities detaining children); *see also* HRW & ACLU, *supra* note 2, at 3-4 (denouncing New York State's prisons for girls as "shrouded in secrecy" due to "dysfunctional" internal monitoring and practically "nonexistent" independent outside monitoring).

177. *See, e.g.*, Coolidge, *6 More Guards Face Charges*, *supra* note 4 (reporting that guards and detained children at Scioto testified that phrase "[s]nitches get stitches" was common refrain in facility); *see also* WORLD REPORT ON VIOLENCE AGAINST CHILDREN, *supra* note 22, at 10 (explaining that many children are scared to report abuse committed against them because they fear reprisals by perpetrators).

178. The CRC Committee uses the term "independent national human rights institutions" ("NHRIs") to refer to the various forms of statutory offices that States Parties may establish to monitor children's rights. *See* CRC Committee, *General Comment No. 2: The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child*, ¶ 1, U.N. Doc. CRC/GC/2002/2 (Nov. 15, 2002) [hereinafter *General Comment No. 2*] (introducing term "independent national human rights institutions" ("NHRIs")); *see also* U.N. Children's Fund [UNICEF] Innocenti Research Ctr., *Independent Institutions Protecting Children's Rights*, INNOCENTI DIG., June 2001, at 2, *available at* http://www.unicef-icdc.org/publications/pdf/digest8e.pdf [hereinafter UNICEF, *Independent Institutions*] (using term "independent human rights institutions" to describe various statutory offices States Parties have established to monitor children's rights within their countries).

179. This Note interchangeably uses the terms "NHRI" and "ombudsman" to refer to a national independent human rights institution. The term "ombudsman" refers to either a man or woman, or an office. *See* UNICEF, *Independent Institutions*, *supra* note

eral forms.[180] "Ombudsman" is a Scandinavian term that has come to mean an independent individual or office responsible for monitoring government's compliance with the law, protecting individual rights, and receiving complaints from persons who believe the government has treated them unfairly.[181] An ombudsman for children's rights would have responsibility for receiving and responding to children's grievances, monitoring governmental performance and compliance with law affecting children's rights, influencing legislation, policy, and practices regarding children's rights, and disseminating information to children and their families.[182]

The Rules for the Protection of Juveniles and the Riyadh Guidelines call for U.N. Member States to institute independent bodies to monitor the conditions of confinement of children in

---

178, at 2 (noting that UNICEF generally uses term "ombudsman" or "ombudsmen," and that "ombudsman" may refer to man, woman, office, or function); *see also* Rios-Kohn, *supra* note 74, at 143 n.44 (defining "ombudsman" as term used to describe independent "person or office").

180. *See* UNICEF, *Independent Institutions*, *supra* note 178, at 2 (describing equalities institutions, human rights commissions, and ombudsmen as three principal types of NHRIs for children's rights among States Parties); *see also General Comment No. 2*, *supra* note 178, at ¶ 1 (approving States Parties' efforts to institute children's ombudspersons, commissioners, NHRIs, and similar independent offices).

181. *See* Rios-Kohn, *supra* note 172, at 143 n.44 (defining "ombudsman" as Scandinavian term used to describe independent person or office who receives complaints and ensures that authorities meet their obligations); *see also* Malfrid Grude Flekkoy, *Implementation and Nongovernmental Bodies: The Children's Ombudsman as an Implementor of Children's Rights*, 6 TRANSNAT'L L. & CONTEMP. PROBS. 353, 355 (1996) (describing ombudsman as independent, non-partisan agent, arbitrator, referee, or spokesperson who ensures government agencies' compliance with law and pressures government to implement policy changes); Jennifer Gannett, Note, *Providing Guardianship of Fundamental Rights and Essential Governmental Oversight: An Examination and Comprehensive Analysis of the Role of Ombudsman in Sweden and Poland*, 9 NEW ENG. J. INT'L & COMP. L. 519, 519 (2003) (summarizing ombudsman's role as advocating for country's people and acting as "government watchdog" to assure government's compliance with law and protection of individual rights); UNICEF, *Independent Institutions*, *supra* note 178, at 2 (stating that ombudsman's responsibility is to monitor fairness and legality of government's actions and protect individual rights).

182. *See* Flekkoy, *supra* note 181, at 360-61 (recounting that at Nov. 1990 meeting of children's rights ombudsmen and representatives from developing nations organized by UNICEF International Child Development Center, participants defined duties of children's rights ombudsmen as responding to complaints and violations, influencing legislation, policies, and practices, disseminating information, and continually monitoring government's performance on children's rights issues); *see also* UNICEF, *Independent Institutions*, *supra* note 178, at 4-7 (defining ombudsman's functions as influencing policy, promoting respect for children's views, increasing awareness of children's rights, and ensuring children's access to meaningful grievance procedures).

state custody.[183] Although the U.N. juvenile justice standards do not indicate at which levels of government Member States should establish ombudsmen, the CRC Committee strongly encourages States Parties to establish an ombudsman for children's rights at the national level.[184] In fact, the CRC Committee considers the establishment of NHRIs to be among the commitments States Parties made upon ratifying the CRC to ensure its effective implementation.[185]

In its *General Comment No. 2* on the role of NHRIs in promoting and protecting children's rights, the CRC Committee provides standards for establishing NHRIs.[186] NHRIs should be "constitutionally entrenched," or at least required by the State Party's legislature.[187] The CRC Committee encourages NHRIs to have a broad mandate covering children's civil, cultural, economic, political, and social rights.[188] Responsibilities of NHRIs may include investigating violations of children's rights upon complaint or on their own initiative; preparing and publicizing

183. *See* Rules for the Protection of Juveniles, *supra* note 5, ¶ 77 (encouraging Member States to establish ombudsman to receive, investigate, and help resolve complaints from detained children); Riyadh Guidelines, *supra* note 14, ¶ 57 (supporting establishment by Member States of ombudsman to protect rights of children deprived of their liberty and oversee implementation of Beijing Rules, Riyadh Guidelines, and Rules for the Protection of Juveniles).

184. *Compare* Rules for the Protection of Juveniles, *supra* note 5, ¶ 77, *and* Riyadh Guidelines, *supra* note 5, ¶ 57 (lacking mention of which level of government should institute ombudsman to monitor conditions of confinement of detained children) *with General Comment No. 2*, *supra* note 178, ¶¶ 1-3 (imploring States Parties to establish independent *national* human rights institutions to promote CRC's implementation, and citing statements made at 1993 World Conference on Human Rights and pronouncements of U.N. General Assembly and Commission on Human Rights calling for "*national* institutions" to protect human rights) (emphasis added).

185. *See General Comment No. 2*, *supra* note 178, ¶ 1; *see also* Rios-Kohn, *supra* note 74, at 153 (explaining that CRC Committee considers monitoring systems and ombudsmen as essential to CRC's successful implementation).

186. *See General Comment No. 2*, *supra* note 178, ¶ 2 (stating that *General Comment No. 2* seeks to provide standards for NHRIs); *see also* Weiner, *supra* note 167, at 78 (detailing standards for NHRIs explained in *General Comment No. 2*).

187. *See General Comment No. 2*, *supra* note 178, ¶ 8 (recommending that NHRIs be "constitutionally entrenched," or at least legislatively established); *see also* Weiner, *supra* note 167, at 78 (quoting *General Comment No. 2*'s recommendation that NHRIs be constitutionally or legislatively mandated).

188. *See General Comment No. 2*, *supra* note 178, ¶ 8 (suggesting that NHRI's mandate be as broad as possible, incorporating CRC and related human rights instruments and encompassing children's civil, cultural, economic, political, and social rights); *see also* Rios-Kohn, *supra* note 74, at 153 (noting CRC Committee's disappointment that most countries' monitoring bodies fail to utilize comprehensive approach).

reports and other documents on children's rights issues; reviewing the adequacy and effectiveness of the country's children's rights laws and practices; harmonizing national law, practices, and regulations with the CRC and other international human rights instruments; and advancing the public's awareness and understanding of the importance of children's rights.[189] The CRC Committee specifically notes that, in light of the requirements set forth in Article 3 of the CRC, States Parties may empower NHRIs to visit institutions holding children in conflict with the law and to report and provide recommendations on the conditions in which detained children are held.[190] According to the United Nations Children's Fund ("UNICEF"), the United States does not have any independent office monitoring children's rights that conforms to the standards explicated in *General Comment No. 2*.[191]

Although the CRC Committee encourages States Parties to create children's rights ombudsmen at the national level, several countries have instituted regional ombudsmen for children's rights.[192] National and regional children's ombudsmen are not incompatible.[193] The national government, however, is ulti-

---

189. *See General Comment No. 2*, *supra* note 178, ¶ 19 (enumerating potential responsibilities of NHRIs); *see also* Weiner, *supra* note 167, at 78 (explaining that NHRIs may hear from persons and acquire information necessary to investigate treatment of children, receive children's complaints, resolve reported problems, and increase children's and adults' awareness of children's rights).

190. *See General Comment No. 2*, *supra* note 178, ¶ 19(s) (suggesting that NHRIs visit institutions detaining children to examine conditions in which they are held, in accordance with Article 3's requirement that States Parties ensure that facilities, institutions, and services responsible for children's care and protection comply with governmental standards); *see also General Comment No. 10*, *supra* note 7, ¶ 28(c) (recommending that independent inspectors have power to regularly and without notice inspect children's conditions of confinement, speak confidentially with detained children, and receive substantively uncensored requests and complaints from detained children).

191. *See* UNICEF, *Independent Institutions*, *supra* note 178, at 15 (declaring that existing ombudsmen in United States do not qualify as independent NHRIs because they primarily aim to protect children in need of state care); *see also* Weiner, *supra* note 167, at 78 & n.59 (concluding from *General Comment No. 2* and *Independent Institutions* that United States currently has neither NHRI nor state-level agencies that comply with standards that CRC Committee recommends).

192. *See* UNICEF, *Independent Institutions*, *supra* note 178, at 16 (mentioning that Belgium has one children's ombudsman each for Flemish and French Communities); *see also* European Network of Ombudspersons for Children [ENOC], Questions and Answers, http://www.ombudsnet.org/enoc/QandA/index.asp (last visited Mar. 23, 2007) (noting that Austria has ombudsman in each of nation's nine regions).

193. *See* UNICEF, *Independent Institutions*, *supra* note 178, at 10 (explaining that Australia has both national and regional children's ombudsmen); *see also* ENOC, *supra*

mately responsible for ensuring successful implementation of the CRC's provisions.[194]

The CRC Committee indicates a preference for specialist NHRIs that focus exclusively on children's rights, but finds acceptable broad-based NHRIs that include an identifiable commissioner, division, or section dedicated to children's issues when a State Party's resources are limited.[195] Each approach has advantages and disadvantages. A specialist children's ombudsman can maintain a distinct and exclusive children's perspective, effectively represent children's interests when they conflict with those of adults, and ensure provision of financial resources to children's issues.[196] On the other hand, specialist NHRIs are not integrated with "mainstream" human rights institutions and thus may be marginalized.[197] Broad-based NHRIs have the ability to integrate children's rights with all human rights, can leverage the resources of other human rights offices, and are less prone to marginalization.[198] Disadvantages of this

---

note 192 (pointing out that Austria and Spain have both federal and regional ombudsmen, and that locally-based ombudsmen are needed to effectively respond to complaints). *But see* UNICEF, *Independent Institutions*, *supra* note 178, at 10 (warning that because federal governments handle many children's issues, countries with only regional ombudsmen may inadequately address children's rights).

194. *See* Doek, *supra* note 139, at 129 (emphasizing that State Party's national government is ultimately responsible for CRC's implementation); *see also* Stewart, *supra* note 11, at 176 (recognizing that, upon ratification, U.S. federal government would ultimately be responsible for nation's compliance with CRC).

195. *See General Comment No. 2*, *supra* note 178, ¶ 6 (finding that increasing number of States Parties have established specialist NHRIs, but where resources are limited, broad-based NHRIs that include identifiable entity monitoring children's rights are best approach); *see also* ENOC, *supra* note 192 (contending that "[t]here is no overwhelming case for separation or for integration" and that establishing effective children's rights ombudsman is most important consideration).

196. *See* ENOC, *supra* note 192 (arguing that specialist ombudsman can focus exclusively on children and guarantee funding for children's rights issues); UNICEF, *Independent Institutions*, *supra* note 178, at 9-10 (observing that specialist NHRIs have clear responsibility to represent children's interests when they conflict with adults' interests).

197. *See* ENOC, *supra* note 192 (claiming that disadvantages of specialist approach include its lack of integration with "mainstream" human rights and danger of having lower standing than general human rights institutions); *see also* UNICEF, *Independent Institutions*, *supra* note 178, at 10 (same).

198. *See* ENOC, *supra* note 192 (reviewing advantages of installing ombudsman for children within broad-based NHRI); *see also* UNICEF, *Independent Institutions*, *supra* note 178, at 10 (explaining that integrating children's ombudsman within broader human rights institution would put children's rights on equal footing with adults' rights and lead to greater coordination among various government agencies affecting children's rights).

approach are that children's issues may receive less priority within a general human rights institution, and children may fail to identify with an institution that mainly serves adults.[199]

The number of children's rights ombudsmen has grown in recent years, rising from sixteen in 1997 to between twenty-five and thirty in 2001.[200] Advocates for NHRIs credit the CRC and the CRC Committee's promotion of children's rights ombudsmen for the increase.[201] Mainly Western and Latin American countries have established children's rights ombudsmen.[202] Numerous countries have established children's rights institutions at either the national or regional level, including Australia, Bolivia, Canada, Colombia, France, Hungary, Norway,[203] and South Africa.[204] NHRIs in Norway and Sweden, for

---

199. *See* ENOC, *supra* note 192 (noting that general human rights institution may subordinate children's issues and be inaccessible and unidentifiable to children); *see also* UNICEF Int'l Child Dev. Ctr., *Ombudswork for Children*, INNOCENTI DIG., 1997, at 11, *available at* http://www.unicef-irc.org/publications/pdf/digest1e.pdf [hereinafter UNICEF, *Ombudswork for Children*] (contending that children's interests will be neglected if children's ombudsman is incorporated within general human rights institution).

200. *See* UNICEF, *Independent Institutions*, *supra* note 178, at 1, 3; *see also* Doek, *supra* note 124, at 246 (remarking that increasing number of children's rights ombudsmen throughout world has allowed more children to file grievances for violations of their rights).

201. *See* UNICEF, *Independent Institutions*, *supra* note 178, at 1 (asserting that surge in number of children's rights ombudsmen would not have been possible without CRC and CRC Committee's advocacy for NHRIs for children's rights); *see also* Weiner, *supra* note 167, at 79 (noting that CRC Committee has been credited for increase in NHRIs).

202. *See* UNICEF, *Independent Institutions*, *supra* note 178, at 3 (stating that ombudsmen for children's rights primarily exist in Western and Latin American nations); *see also* Doek, *supra* note 124, at 246 (mentioning that number of children's rights ombudsmen is growing, particularly in Europe).

203. Norway was the first nation in the world to create a children's rights ombudsman. *See* Rochelle D. Jackson, Note, *The War Over Children's Rights: And Justice For All? Equalizing the Rights of Children*, 5 BUFF. HUM. RTS. L. REV. 223, 239 (1999); *see also* Norway, The Official Site in the United States, http://www.norway.org/policy/children/rights/rights.htm (last visited Feb. 19, 2007) (asserting that Norway established world's first children's rights ombudsman in 1981).

204. *See* Jackson, *supra* note 203, at 239 (noting that Austria, Colombia, Costa Rica, and Spain have established children's rights ombudsmen at provincial and national levels, and that Norway established world's first children's rights ombudsman); UNICEF, *Independent Institutions*, *supra* note 178, at 15-25 (recognizing that independent national or regional children's rights ombudsmen exist in Australia, Austria, Belgium, Bolivia, Canada, Colombia, Costa Rica, Denmark, France, Guatemala, Hungary, Iceland, Ireland, Italy, Macedonia, New Zealand, Nicaragua, Northern Ireland, Norway, the Philippines, Portugal, Romania, Russian Federation, South Africa, Spain, Sweden, and Wales); ENOC, Members, http://www.ombudsnet.org/enoc/members/index.asp (last visited Apr. 5, 2007) (listing ENOC members as Austria, Belgium, Croa-

example, have experienced success in advocating for children's rights. The Swedish and Norwegian children's ombudsmen increased awareness of children's rights issues, helped implement the CRC, and became models for other countries to follow in addressing children's rights.[205] Nonetheless, children's rights ombudsmen still face some challenges. Sweden observed that its children's rights NHRI lacks legal authority and has difficulty obtaining information from government agencies.[206]

The CRC Committee believes that every State Party to the CRC needs an NHRI.[207] The CRC Committee argues that children need an ombudsman dedicated to their needs because their developmental state renders them uniquely vulnerable to human rights violations, their views are largely ignored, they are too young to vote and therefore cannot meaningfully participate in the political process, they face challenges in using the judicial system to assert their rights, and they have limited access to institutions that may protect them.[208] Opponents of children's rights ombudsmen assert that a children's NHRI would undermine parents' authority in raising their children, encourage other governmental authorities to neglect their duties to children, need-

---

tia, Denmark, France, Georgia, Greece, Hungary, Iceland, Ireland, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Northern Ireland, Norway, Poland, Portugal, Russian Federation, Slovenia, Spain, Sweden, and United Kingdom). UNICEF excluded many countries' ombudsmen from its list because they do not qualify as "independent, statutory national or regional institutions" having extensive authority to monitor, promote and protect children's rights. *See* UNICEF, *Independent Institutions*, *supra* note 178, at 15.

205. *See* UNICEF, *Independent Institutions*, *supra* note 178, at 13 (noting accomplishments of children's ombudsmen in Norway and Sweden); *see also* Flekkoy, *supra* note 181, at 358-59 (commenting that Norway's ombudsman for children successfully advocated for children and parents and influenced legislative passage of proposals improving children's lives).

206. *See* UNICEF, *Independent Institutions*, *supra* note 178, at 13 (discussing need for Swedish children's ombudsman to have legal power and access to information, documents, and representatives from government agencies); *see also* Flekkoy, *supra* note 181, at 365-67 (recognizing that children's ombudsmen need access to political decisionmakers and legal authority to effectively perform their duties).

207. *See General Comment No. 2*, *supra* note 178, ¶ 7 ("It is the view of the [CRC] Committee that every State needs an independent human rights institution with responsibility for promoting and protecting children's rights."); *see also* Weiner, *supra* note 167, at 78 (quoting *General Comment No. 2*).

208. *See General Comment No. 2*, *supra* note 7, ¶ 5 (discussing reasons why children need ombudsman); *see also* UNICEF, *Independent Institutions*, *supra* note 178, at 13 (explaining that children need ombudsman because they cannot vote, have less access to legal system than adults, are vulnerable to adult authority, and lack means to exercise their rights).

lessly increase government bureaucracy, and be too expensive.[209]

UNICEF refutes several objections to the establishment of NHRIs. It notes that NHRIs would not add to governmental bureaucracy because they operate independently of government.[210] UNICEF also argues that NHRIs actually are cost-effective when compared to the significant costs incurred when government fails to prevent mistreatment of children.[211] UNICEF dismisses the argument that a children's rights ombudsman would interfere with parents' rights, pointing out that government is justified in intervening in certain cases where parents are mistreating their children, and asserting that a children's ombudsman would play a vital role in protecting children's rights.[212]

Some scholars have mentioned that the United States should consider establishing a national children's rights ombudsman.[213] Some NGOs have urged U.S. states to establish independent, state-level child advocate offices to monitor the treatment of children in the juvenile justice system.[214] As noted

---

209. *See* Flekkoy, *supra* note 181, at 358 (outlining arguments that opponents to children's ombudsman in Norway raised); *see also* UNICEF, *Independent Institutions*, *supra* note 178, at 12-14 (refuting arguments against children's ombudsmen, including that children's rights ombudsmen would create unnecessary bureaucracy, infringe on parents' rights, and divert funds away from direct services for children).

210. *See* UNICEF, *Independent Institutions*, *supra* note 178, at 12 (clarifying that children's NHRI would not be unit of government, but rather would act independently); *see also* UNICEF, *Ombudswork for Children*, *supra* note 199, at 10 (stressing that ombudsmen must be free from governmental interference and manipulation).

211. *See* UNICEF, *Independent Institutions*, *supra* note 178, at 12 (arguing that establishment of children's ombudsman would reduce costs by anticipating and preventing problems, such as conditions leading to juvenile crime and mental illness); *cf.* Flekkoy, *supra* note 181, at 359 (observing that Norwegian government recognized effectiveness of country's children's ombudsman and accordingly increased its budget and staff).

212. *See* UNICEF, *Independent Institutions*, *supra* note 178, at 13 (recognizing that children have rights within family and dismissing argument that government does not or should not have role in protecting children within family environment).

213. *See* Weiner, *supra* note 167, at 79 (supporting establishment of NHRI in United States to galvanize institutional changes benefiting children); *see also* Stewart, *supra* note 11, at 182 (rationalizing that United States should consider developing institutional mechanism to integrate CRC provisions into U.S. law and practice).

214. *See* HRW & ACLU, *supra* note 2, at 13 (asking New York State legislature to establish independent Office of Child Advocate to monitor state's juvenile justice and foster care institutions); *see also* FORDHAM INTERDISCIPLINARY CTR. FOR FAMILY & CHILD ADVOCACY, AN INDEPENDENT VOICE FOR CHILDREN: WHY NEW YORK STATE NEEDS AN OFFICE OF THE CHILD ADVOCATE iv-v (2007), *available at* http://law.fordham.edu/documents/int-2AnIndependentVoiceForChildren.pdf (recommending that New York State create Office of Child Advocate to monitor children's treatment in state's child welfare and juvenile justice systems).

above, national and regional ombudsmen for children's rights are not incompatible.[215] U.S. states currently have agencies within their jurisdiction for supervising the care of detained children, but child advocates have criticized these agencies as ineffective.[216] Confirming states' inability to effectively monitor the treatment of detained children, the U.S. Department of Justice has been forced to intervene in instances when state juvenile justice institutions abused children in their care.[217]

2. Proposal 2: U.N. Special Representative of the Secretary-General on Violence against Children

The report of the Independent Expert for the U.N. Secretary-General's Study on Violence against Children ("Violence Study") and international NGOs recommend that the U.N. establish a special representative of the Secretary-General on violence against children.[218] The special representative would serve as a "high-profile global advocate" to encourage the eradication of all violence against children, support international and regional collaboration, and ensure that governments implement the Violence Study's recommendations.[219] The special represen-

---

215. *See* UNICEF, *Independent Institutions*, *supra* note 178, at 10 (observing that Australia has both national and regional children's ombudsmen); *see also* ENOC, *supra* note 192 (noting that Austria and Spain have both federal and regional ombudsmen).

216. *See* HRW & ACLU, *supra* note 2, at 3-7 (denouncing New York State Office of Child and Family Services' abuse of girls in state's juvenile prisons for girls); *see also* Coolidge, *Ohio Sued Over Girls' Prison*, *supra* note 4 (reporting that child advocacy organization in Ohio, Children's Law Center, sued Ohio Department of Youth Services over abuse of girls held in Scioto).

217. *See* HRW, HIGH COUNTRY LOCKUP: CHILDREN IN CONFINEMENT IN COLORADO 25 (1997), *available at* http://www.hrw.org/reports/pdfs/c/crd/us978.pdf (observing that U.S. Department of Justice opened investigation into abuses in Louisiana jails holding children and concluded that facilities inflicted "life-threatening" conditions; noting that after HRW exposed abuses in juvenile detention facilities in Georgia, U.S. Department of Justice subsequently conducted investigation and discovered further violations); Patrice Sawyer, *Abuse Cited at Youth Training Centers*, CLARION-LEDGER (Jackson, Miss.), July 15, 2003, at 1A (stating that U.S. Department of Justice found violations of detained children's rights in Columbia Training School in Mississippi).

218. *See* WORLD REPORT ON VIOLENCE AGAINST CHILDREN, *supra* note 22, at 25 (proposing creation of U.N. special representative of Secretary-General on violence against children); CRIN ET AL., FOLLOW-UP TO THE U.N. SECRETARY-GENERAL'S STUDY ON VIOLENCE AGAINST CHILDREN: ESTABLISHMENT OF A SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL 3, *available at* http://www.crin.org/docs/SRSG_May2007.pdf (urging U.N. Member States to approve special representative on violence against children at Sixty-second Session of U.N. General Assembly).

219. *See* WORLD REPORT ON VIOLENCE AGAINST CHILDREN, *supra* note 22, at 25; *see also* CRIN ET AL., *supra* note 218, at 3-5 (arguing that special representative should serve

tative's functions would include distributing the Violence Study's recommendations to international, national, and regional entities, and providing regular reports to the U.N. Human Rights Council and General Assembly.[220] The special representative's duties may also include ensuring that children have the opportunity to express their views on abuse, conducting country visits, researching issues concerning violence against children, and working to reduce detention of children.[221]

Advocates for a special representative argue that, in light of the widespread, deep-seated violence against children that the Violence Study revealed, establishing a high-level international post is imperative to eliminating violence against children.[222] Proponents contend that a special representative would help keep violence against children on the international agenda.[223] Although numerous U.N. special procedures[224] protecting chil-

---

as prominent and independent global advocate, promote implementation and monitoring of Study's recommendations, and encourage coordination of efforts among various agencies).

220. *See* WORLD REPORT ON VIOLENCE AGAINST CHILDREN, *supra* note 22, at 25; *see also* CRIN, *supra* note 22 (suggesting that special representative work to increase awareness and encourage systematic collection and distribution of information on violence against children, and that special representative report annually to Human Rights Council and General Assembly).

221. *See* CRIN, *supra* note 22 (discussing proposed responsibilities of special representative); *see also* CRIN, Violence Study: Recommendations for Action, http://www.crin.org/violence/search/closeup.asp?infoID=10479 (last visited Mar. 3, 2007) [hereinafter CRIN, Violence Study] (proposing that special representative conduct country visits and ensure that children are involved in efforts to end violence against them and that their views are heard).

222. *See* CRIN ET AL., *supra* note 218, at 2-3 (asserting that highest levels of leadership, including special representative, are necessary to address shocking scope of violence against children); *see also* Letter from Jakob Egbert Doek, Chairperson, CRC Committee, to U.N. Member States 2 (Oct. 4, 2006), *available at* http://www.crin.org/docs/Letter_Jaap_Doek_06.doc (positing that, in light of widespread violence against children in their homes, schools, communities, workplaces, and other institutions, U.N. Member States must establish prominent, high-level special representative post to address issue).

223. *See* CRIN, *supra* note 22; *see also* CRIN, Violence Study, *supra* note 221 (arguing that, to maintain momentum spurred by Violence Study's findings, U.N. must act quickly to establish special representative).

224. "Special procedures" is the general term for U.N. human rights mechanisms addressing thematic and country mandates. The mandate holders may be individuals ("Special Rapporteur," "Special Representative of the Secretary-General," "Representative of the Secretary-General," or "Independent Expert") or working groups. Special procedures may address human rights conditions in specific countries ("country mandates") or specific trends in international human rights violations ("thematic mandates"). *See* OHCHR, Special Procedures Assumed by the Human Rights Council, http:/

dren's rights already exist, supporters of a special representative on violence against children claim that existing mechanisms do not comprehensively address violence against children.[225] Advocates contend that a special representative on violence against children would collaborate with, but not duplicate the work of, other U.N. entities.[226]

Special procedures have power to conduct country visits to investigate reports of abuse,[227] but the country must first grant the expert entrance into the country and access to relevant persons and facilities.[228] Nations sometimes resist or even deny a

/www.ohchr.org/English/bodies/chr/special/index.htm (last visited May 2, 2007) (explaining U.N. special procedures and providing definitions). NGOs claim that a special representative on violence against children would have a higher profile and larger influence than a special rapporteur because special representatives report directly to the Secretary-General and can more easily collaborate with U.N. entities, including the General Assembly, Security Council, World Health Organization, and International Labour Organization. A special rapporteur, on the other hand, may only engage with U.N. human rights institutions. *See* CRIN, *supra* note 22 (explaining why international NGOs prefer special representative on violence against children to special rapporteur); *see also* CRIN ET AL., *supra* note 218, at 5-6 (noting that Violence Study called for multisectoral response to violence against children addressing not only human rights, but also child development, education, labor, and public health, and that special rapporteur would only be linked to human rights). This Note uses the terms "special procedures" and "experts" interchangeably.

225. *See* CRIN ET AL., *supra* note 218, at 5 (acknowledging that Special Rapporteur on Sale of Children, Child Prostitution and Child Pornography; Special Rapporteur on Torture; Special Rapporteur on Violence against Women; Special Rapporteur on Summary Executions; and Special Rapporteur on Trafficking in Persons, Especially Women and Children address violence against children, but maintaining that these mechanisms fail to comprehensively address problem); *see also* CRIN, Violence Study, *supra* note 221 (recognizing that existing special procedures and mechanisms do not address violence against children in their homes, schools, and in care and justice institutions).

226. See WORLD REPORT ON VIOLENCE AGAINST CHILDREN, *supra* note 22, at 25 (pointing out that special representative should collaborate with, but not duplicate work of CRC Committee; Special Representative of Secretary-General for Children in Armed Conflict; Special Rapporteur on Sale of Children, Child Prostitution and Child Pornography; Special Rapporteur on Violence against Women; and Special Rapporteur on Trafficking in Persons); *see also* Letter from Jakob Egbert Doek to U.N. Member States, *supra* note 222, at 2 (claiming that special representative on violence against children would ensure cooperation with existing special procedures involving children's rights and not duplicate their work).

227. *See* OHCHR, *Fact Sheet No. 27: Seventeen Frequently Asked Questions about United Nations Special Rapporteurs*, at 9-10 (Apr. 2001), *available at* http://www.ohchr.org/english/about/publications/docs/factsheet27.pdf [hereinafter *Fact Sheet No. 27*] (explaining that U.N. human rights experts may conduct field missions to investigate conditions relating to their mandate); *see also* OHCHR, *supra* note 224 (stating that special procedures conduct country visits to investigate national human rights conditions).

228. *See Fact Sheet No. 27*, *supra* note 227, at 10 (explicating that special procedures cannot conduct field mission without country's consent, and that experts require access

special procedure's request to visit,[229] but given the public and media attention special procedures can attract to human rights violations, governments risk international scorn if they do not succumb to pressure to permit an expert's visit.[230]

Experts have the potential to significantly increase the public's awareness of human rights issues.[231] Experts can increase government accountability by giving a voice to oppressed victims long ignored by the public and influencing governments to reevaluate their policies.[232] On the other hand, special procedures can only conduct a few country visits per year because they maintain full-time jobs while serving as experts and their funding is inadequate.[233] Furthermore, a special procedure's recom-

---

to relevant actors and facilities); *see also* OHCHR, *supra* note 224 (noting that mandate holders typically send letter to government requesting country visit, and visit is only authorized after government consents).

229. *See Fact Sheet No. 27*, *supra* note 227, at 9 (acknowledging that governments sometimes deny access to country mandate experts); *see also* FORD FOUND., CLOSE TO HOME: CASE STUDIES OF HUMAN RIGHTS WORK IN THE UNITED STATES 101 (2004), *available at* http://www.fordfound.org/publications/recent_articles/docs/close_to_home/part4.pdf (observing that, despite U.S. government's sluggishness in addressing issue of abuse of women in U.S. prisons, President Clinton permitted Special Rapporteur on Violence against Women to visit and investigate conditions in U.S. women's prisons in 1998).

230. *See* FORD FOUND., *supra* note 229, at 101 (reporting that Michigan was only one out of seven U.S. states that Special Rapporteur on Violence against Women arranged to visit that refused her entry to its state-run prisons, and describing Michigan's actions as "a political blunder" and "an extreme embarrassment to the state" that "got the attention of the media and the court"); *see also Fact Sheet No. 27*, *supra* note 227, at 10 (observing that media attention on country visits often puts spotlight on human rights issues).

231. *See Fact Sheet No. 27*, *supra* note 227, at 12 (explaining that experts can focus attention on issues that previously were not on agenda of international human rights community); *see also* FORD FOUND., *supra* note 229, at 101 (asserting that visit of Special Rapporteur on Violence against Women to U.S. prisons significantly increased public awareness regarding abuse of incarcerated women in United States).

232. *See Fact Sheet No. 27*, *supra* note 227, at 13 (claiming that mandate holders' attention to human rights issues allows victims to voice their complaints and influences governments to reassess their policies in consideration of human rights concerns); *see also* FORD FOUND., *supra* note 229, at 102 (lauding changes in U.S. federal and state law concerning custodial sexual misconduct that followed visit of Special Rapporteur on Violence against Women).

233. *See Fact Sheet No. 27*, *supra* note 227, at 9, 17, 20 (noting that U.N. budget usually limits each expert to two country visits annually; explaining that experts maintain full-time jobs while providing services as mandate holders on part-time basis; commenting that increasing number of special procedures without increasing funding augments burden placed on OHCHR; concluding that special procedures system has not yet reached its full potential due to severely inadequate funding); *see also* CRIN ET AL., *supra* note 218, at 9 (emphasizing that special representative on violence against chil-

mendations are not binding.[234] Although expert reports can provide valuable insights, achieving compliance with international human rights law is the responsibility of governments.[235]

III. *WHY THE UNITED STATES SHOULD RATIFY THE CRC AND ESTABLISH A NATIONAL OMBUDSMAN FOR CHILDREN'S RIGHTS*

Part III of this Note argues that the United States should ratify the CRC and establish a national ombudsman for children's rights. Ratification of the CRC would provide an important mechanism for the United States to address children's rights issues. Instituting a national ombudsman for children's rights in the United States would provide a more effective remedy to the physical and sexual abuse of girls in U.S. juvenile detention facilities than would a special representative of the Secretary-General on violence against children.

A. *The United States Should Ratify the CRC*

Several reasons support U.S. ratification of the CRC. First, although U.S. law largely conforms to the CRC,[236] the United States does not go far enough in protecting children's rights. The United States lives in international isolation in its support

---

dren should receive funding sufficient to allow at least six country visits annually); Letter from Jakob Egbert Doek to U.N. Member States, *supra* note 222, at 2 (encouraging Member States to ensure adequate funding for special representative on violence against children).

234. *See Fact Sheet No. 27*, *supra* note 227, at 11 (pointing out that effectiveness of special procedures system depends on governments' willingness to implement experts' conclusions and recommendations); *see also* Special Rapporteur on Violence against Women, its Causes and Consequences, *Integration of the Human Rights of Women and the Gender Perspective: Violence against Women*, ¶ 4(b), *delivered to the Commission on Human Rights*, U.N. Doc. E/CN.4/2004/66 (Dec. 26, 2003) (noting that Special Rapporteur on Violence against Women makes "urgent appeals" asking governments to explain whether they are committing violence against women in violation of human rights laws).

235. *See Fact Sheet No. 27*, *supra* note 227, at 13 (acknowledging that advancement of human rights depends on how governments, society, and international community react to experts' reports, and noting for example that Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions warned international community before Rwandan genocides occurred, but that international community did not sufficiently heed warning); *see also* Doek, *supra* note 139, at 129 (emphasizing that State Party's national government is ultimately responsible for CRC's implementation).

236. *See supra* note 120 and accompanying text (noting that U.S. law already comports with CRC).

for life sentences without the possibility of parole for juvenile offenders,[237] similar to when the country sanctioned the universally condemned practice of executing child offenders.[238] Furthermore, the United States has a poor human rights record on various measures of child development, such as infant mortality, access to education and health care, child poverty, and child deaths caused by abuse, mistreatment, and neglect.[239] Despite these failures, the United States continues to disregard the potential role of international human rights law in addressing these problems.[240] Ratifying the CRC would provide a useful tool for addressing children's rights issues in the United States and would bring the United States in line with international human rights norms.

Secondly, ratification of the CRC would help spur the United States to improve its children's rights policies. The CRC would offer a comprehensive framework for reevaluating U.S. polices on children.[241] In particular, the CRC has influenced many countries throughout the world to improve their juvenile justice systems.[242] The CRC's integration with the U.N. juvenile justice standards would provide an effective means for the United States to address the physical and sexual abuse of detained girls.[243]

Thirdly, ratifying the CRC would allow the United States to reassert its position as a leader in human rights. The widespread physical and sexual abuse of girls in juvenile detention facilities

---

237. *See supra* notes 164-65 and accompanying text (explaining that United States is among few countries that permit life sentences without possibility of parole for juvenile offenders, in violation of international human rights law).

238. *See supra* note 159 and accompanying text (noting that United States had been only country that officially sanctioned juvenile death penalty).

239. *See supra* note 170 and accompanying text (pointing out that United States has one of worst children's rights records among industrialized nations in various standards of child development).

240. *See supra* note 169 and accompanying text (discussing U.S. belief that international law applies to other countries but not to United States).

241. *See supra* note 121 and accompanying text (recognizing CRC's potential to influence improvement of U.S. children's rights policies).

242. *See supra* note 124 and accompanying text (explaining that CRC influenced countries to institute grievance procedures and independent monitoring in juvenile justice institutions, and spurred nations including Cambodia, Ghana, and Romania to reform their juvenile justice codes).

243. *See supra* notes 94-117 and accompanying text (discussing U.N. juvenile justice standards' integration with CRC and detailing their provisions).

undermines U.S. authority on human rights issues.[244] Ratifying the CRC would bring the United States in compliance with international human rights law and enable the United States to monitor other nations' compliance with the CRC.[245]

Arguments against U.S. ratification of the CRC are unpersuasive. First, although the CRC places great emphasis on children's autonomy, the treaty in no way undermines the central role of the family in children's lives.[246] Numerous CRC provisions explicitly support the role of parents and the family in ensuring children's healthy development.[247] Furthermore, the CRC does not assert children's right to abortion, provide a means for children to sue their parents, obstruct parents' ability to decide which religions their children learn, or limit parental choices in education.[248]

Secondly, U.S. ratification of the CRC would not interfere with U.S. sovereignty. The United States has ratified other international human rights treaties without any significant impact on U.S. sovereignty.[249] In addition, the CRC does not require States Parties to enact national legislation to ensure compliance with the treaty, although the CRC Committee recommends that national governments provide a centralized approach to implementing the CRC.[250] Furthermore, the recommendations that the CRC Committee provides in its reports are not binding, al-

---

244. *See supra* notes 1-2 and accompanying text (stating that, although United States considers itself leader on human rights, abuse of detained girls weakens that position).

245. *See supra* notes 11, 121-22 and accompanying text (asserting that ratifying CRC would motivate United States to improve its children's rights practices in accordance with international human rights law, and would allow United States to monitor other countries' compliance).

246. *See supra* notes 129-39 and accompanying text (elucidating that CRC strongly supports role of parents and family in children's healthy upbringing).

247. *See supra* notes 130-34 and accompanying text (enumerating various CRC provisions that support importance of parents and family in children's lives).

248. *See supra* notes 135-39 and accompanying text (refuting that CRC permits interference in these areas).

249. *See supra* notes 61, 66, 93, 141 and accompanying text (stating that United States ratified CAT, Convention on Prevention and Punishment on the Crime of Genocide, ICCPR, International Convention on Elimination of All Forms of Racial Discrimination, and Optional Protocols to CRC).

250. *See supra* notes 153-55 and accompanying text (noting that although CRC does not require national legislation to implement treaty, CRC's implementation is ultimately national government's responsibility, and that CRC Committee encourages centralized approach).

though States Parties should seriously consider them.[251] The United States could ratify the CRC with reservations,[252] as it has done with other human rights treaties,[253] but it should not do so. If, for example, the United States entered a reservation to the CRC's prohibition against life sentences without the possibility of release for juvenile offenders, the reservation would likely attract international scorn and may contravene the object and purpose of the CRC.[254]

Thirdly, U.S. ratification of the CRC would not disrupt the U.S. federalist system. The CRC does not mandate that States Parties enact federal legislation to comply with the treaty.[255] Moreover, federalism concerns should not outweigh the need for concerted action to address the physical and sexual abuse of detained girls, a prevalent problem in state-run juvenile justice institutions.[256]

Lastly, although the CRC provides rights granted to children in other international human rights treaties,[257] the CRC is not duplicative of those treaties. The CRC provides additional and more comprehensive and detailed rights to children than any other human rights treaty,[258] including rights protecting

---

251. *See supra* note 90 and accompanying text (stating that CRC Committee's recommendations are not binding, but nonetheless should receive thoughtful consideration).

252. *See supra* note 147 and accompanying text (observing that CRC permits ratification with reservations).

253. *See supra* note 147 and accompanying text (commenting that United States has ratified several international human rights treaties with reservations, understandings, and declarations).

254. *See supra* notes 164-66 and accompanying text (noting that United States continues to sanction internationally condemned practice of life sentences without possibility of parole for juvenile offenders, and that U.S. reservation to CRC on this ground would likely engender international scorn and may flout CRC's object and purpose).

255. *See supra* note 153 and accompanying text (clarifying that CRC does not require enactment of federal legislation, thus U.S. states could still retain control over areas traditionally under their jurisdiction).

256. *See supra* notes 2-4, 23-39 and accompanying text (describing pervasive physical and sexual abuse of girls in state-operated juvenile detention facilities throughout United States).

257. *See supra* note 167 and accompanying text (discussing critics' argument that CRC duplicates rights granted to children by other international human rights treaties).

258. *See supra* notes 74, 168 and accompanying text (noting that CRC is most comprehensive and detailed treaty protecting children's rights and provides additional and more specific rights to children than those afforded in other human rights treaties).

children in conflict with the law.[259] The CRC is also especially notable for its protection of girls' equal rights.[260]

B. *Establishing a U.S. National Ombudsman for Children's Rights Would Provide a More Effective Approach to Ending the Abuse of U.S. Detained Girls*

To protect detained girls from physical and sexual abuse, the United States should establish a national ombudsman for children's rights upon ratification of the CRC. As the CRC Committee recommends that such an ombudsman be constitutionally or statutorily mandated, the U.S. Congress should enact legislation creating a national ombudsman for children's rights.[261] The ombudsman should also be a specialized institution focused exclusively on children's rights, as opposed to a division within a general human rights institution.

Several arguments support U.S. establishment of a national children's rights ombudsman. First, the CRC Committee recommends that States Parties establish a national ombudsman for children's rights,[262] and the U.N. juvenile justice standards also encourage countries to create such institutions.[263] Secondly, numerous countries, including developed nations similar to the United States, have children's rights ombudsmen that successfully monitor and advocate for children's rights.[264] Thirdly, because the national government is ultimately responsible for the CRC's implementation, it is most appropriate for the children's rights ombudsman to operate at the federal level.[265] Although

259. *See supra* notes 80-83 and accompanying text (summarizing CRC provisions protecting children deprived of their liberty).

260. *See supra* note 123 and accompanying text (observing that CRC is remarkable for its protection of girls' equal rights).

261. *See supra* note 187 and accompanying text (discussing CRC Committee's recommendation that children's ombudsman be constitutionally or legislatively mandated).

262. *See supra* notes 184-85 and accompanying text (noting CRC Committee's approval of national children's rights ombudsmen).

263. *See supra* note 183 and accompanying text (stating that U.N. juvenile justice standards advocate for independent institutions to monitor treatment of detained children).

264. *See supra* notes 200-05 and accompanying text (observing that numerous countries have adopted children's rights ombudsmen and noting successes of Norway's and Sweden's children's ombudsmen).

265. *See supra* notes 154-55, 194 and accompanying text (emphasizing that national government is accountable for CRC's implementation).

U.S. states have agencies that monitor children's treatment, the physical and sexual abuse of detained girls persists, proving these state agencies ineffective.[266] Because states have failed to adequately protect detained children from abuse, the U.S. Department of Justice has in some instances been forced to intervene to protect children's rights.[267]

The U.S. children's rights ombudsman should be a specialized institution focused exclusively on children's rights. Specialized ombudsmen prevent the marginalization of children's issues, more effectively address children's specific needs, and enable children to more readily identify with them.[268] Furthermore, the CRC Committee prefers specialized ombudsmen focused on children's rights.[269]

Establishing a U.S. national ombudsman for children's rights is a superior approach to appointing a U.N. special representative of the Secretary-General on violence against children for a number of reasons. First of all, although a special representative may provide useful guidance,[270] national governments are ultimately accountable for a nation's compliance with international human rights law.[271] Secondly, unlike a special representative, a national children's rights ombudsman would have a broad mandate to address not only violence against girls, but also other challenges detained girls face, including socio-economic disadvantages, pre-existing mental health disorders, and prior physical and sexual abuse.[272] Thirdly, a national children's

266. *See supra* note 216 and accompanying text (mentioning that NGOs have denounced state-level children's agencies as ineffectual).

267. *See supra* note 217 and accompanying text (pointing out that U.S. Department of Justice has investigated state juvenile justice institutions that abused detained children and found serious violations of children's rights).

268. *See supra* notes 199, 208 and accompanying text (stating that general human rights institutions may marginalize children's issues, and asserting that children may not identify with general human rights institution primarily geared toward adults; observing that children's rights ombudsman is necessary to address children's unique vulnerabilities).

269. *See supra* note 195 and accompanying text (commenting that CRC Committee favors specialized children's rights institutions).

270. *See supra* note 219 and accompanying text (noting that special representative would serve as prominent global advocate for children's right to freedom from violence).

271. *See supra* notes 154-55, 194, 235 and accompanying text (stressing that national government is responsible for CRC's implementation and compliance with international human rights law generally).

272. *See supra* notes 41-55, 170, 188 and accompanying text (observing that de-

ombudsman could collaborate with other federal agencies to more effectively protect children's rights, whereas a special representative could not.[273] Lastly, a national children's rights ombudsman could proactively address children's issues,[274] as opposed to a special representative, who could only reactively address violence against children after receiving an invitation to visit the country.[275]

One problem that both a national children's ombudsman and a special representative may face is the lack of legal authority to enforce their recommendations.[276] But because a national children's ombudsman would be installed within the United States, that institution would most likely have more influence on improving U.S. policies on children than a special representative.[277]

Appointing a special representative on violence against children would pose other disadvantages as well. First, countries have the authority to deny a special procedure's request to visit.[278] Even if a nation permits an expert's visit, a jurisdiction within the country may deny access to pertinent facilities.[279] Secondly, a special representative on violence against children may overlap with the work of existing U.N. special procedures ad-

---

tained girls are primarily girls of color from low-income backgrounds who have mental health disorders and suffer physical and sexual abuse before entering detention; discussing United States' poor record on various children's rights issues; noting CRC Committee's recommendation that children's ombudsmen have broad mandate encompassing children's civil, cultural, economic, political, and social rights).

273. *See supra* note 206 and accompanying text (mentioning Swedish children's NHRI's concerns regarding its lack of contact with other government agencies).

274. *See supra* note 211 and accompanying text (commenting that national children's rights ombudsman could reduce costs to society by anticipating and preventing problems that lead to juvenile crime and other problems).

275. *See supra* notes 227-28 and accompanying text (recognizing that U.N. special procedures may only visit country with government's permission)

276. *See supra* notes 206, 234 and accompanying text (discussing Swedish ombudsman's lack of legal authority; pointing out that recommendations of U.N. special procedures are not binding).

277. *See supra* note 205 and accompanying text (noting that Norwegian and Swedish children's ombudsmen raised awareness of children's issues and influenced enactment of laws helping children).

278. *See supra* note 229 and accompanying text (mentioning that countries may deny special procedure's request to visit).

279. *See supra* note 230 and accompanying text (stating that although President Clinton granted request of Special Rapporteur on Violence against Women to visit U.S. women's prisons, U.S. state of Michigan denied Special Rapporteur access to its prisons for women).

dressing violence and children.[280] Finally, time and funding constraints limit the number of country visits a special representative can conduct.[281] Creating a new special representative on violence against children may further strain the U.N.'s already limited budget for special procedures.[282]

CONCLUSION

The physical and sexual abuse of girls in U.S. juvenile detention facilities is a serious and pervasive problem that the United States has failed to adequately address. The United States should pay particular attention to girls in conflict with the law because they have unique needs that the current juvenile justice framework grossly ignores. The United States should ratify the CRC because it would provide an effective means for improving the treatment of detained girls. To comprehensively address the abuse of detained girls, the U.S. Congress should enact legislation to establish a national ombudsman focused exclusively on children's rights.

280. *See supra* notes 224-26 and accompanying text (observing that work of special representative on violence against children would overlap with work of various existing special procedures focused on children and violence).

281. *See supra* note 233 and accompanying text (noting that budget and time constraints limit experts' ability to conduct country visits).

282. *See supra* note 233 and accompanying text (explaining that raising number of special procedures without augmenting funding would increase OHCHR's burden; finding that special procedures system has not reached its full potential due to insufficient funding).