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Child Rights Trending: Accommodating Children with Disabilities in the Global Human Rights Framework and US Foreign Policy

*Janet E. Lord**

INTRODUCTION

The adoption of the Convention on the Rights of Persons with Disabilities (CRPD)¹ by the United Nations General Assembly in 2006 breaks new ground in recognizing the equality of children and adults with disabilities, and places their specific needs for full recognition of human rights within the context of their own experiences. The CRPD addresses the broad spectrum of issues that lie at the center of a progressive approach to rights for children with disabilities. These include disability-based stigma and its drivers, early intervention, reasonable accommodation as an element of non-discrimination, inclusive education, individualized education plans, supports in the community, non-isolation and warehousing in institutions or orphanages, and respect for the physical and mental integrity in the face of disproportionate risk of violence and abuse. Unlike

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¹ Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, U.N. Doc. A/61/49 (Dec. 13, 2006) [hereinafter CRPD]; Optional Protocol to the Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, annex II, UN Doc. A/RES/61/106 (Jan. 24, 2007) [hereinafter Optional Protocol]. For more on the Convention on the Rights of Persons with Disabilities, see Janet E. Lord & Michael Ashley Stein, *The Domestic Incorporation of Human Rights Law and the United Nations Convention on the Rights of Persons with Disabilities*, 83 U. WASH. L. REV. 449, 456 (2008).

the Convention on the Rights of the Child (CRC),² the CRPD devotes a general and transversally applied provision to ensure the rights of children with disabilities, thereby ensuring that the entirety of the treaty is interpreted in alignment with the specific needs of those children.³ The elevation of the rights of children with disabilities on the global human rights agenda, whether through the new campaign to end long-term institutionalization, the successful effort to integrate disability issues into the post-2015 development agenda and Sustainable Development Goals, or other measures brings into sharp focus whether and how the United States is best placed to impact these efforts.

This Article proceeds in three parts. Following the introduction, Part I analyzes the concept of child rights as applied to children with disabilities in instruments antecedent to the CRPD. It goes on to examine the treatment of children with disabilities in the CRC and in the text of the CRPD. In so doing, it exposes the significant conceptual shift in how children with disabilities are characterized as agents and holders of rights in the CRPD, in contrast to prior articulations. Part II explains how this new framework is used to expose and address major human rights issues that face children with disabilities globally. These include tackling the stigma and resulting discrimination experienced by children with disabilities, and the legal responses, closing the education gap, addressing the campaign to end institutionalization and placement in orphanages, detention of unaccompanied minors and various travel bans that impact children with disabilities and their families, and egregious abuses that are insufficiently addressed by international fact-finders.

² See Convention on the Rights of the Child, G.A. Res. 44/25, annex, UN Doc. A/44/49 (Sept. 2, 1990) [hereinafter CRC]. See Thomas Hammarberg, *The Rights of Disabled Children—The UN Convention on the Rights of the Child*, in HUMAN RIGHTS AND DISABLED PERSONS 147 (Theresia Degener & Yolán Koster-Dreese eds., 1995) (discussing the rights of disabled children in the Convention on the Rights of the Child).

³ CRPD, *supra* note 1, at art. 4(f).

Both the CRC and the CRPD are impacting awareness of major children's rights challenges and prompt action by States to redress human rights wrongs. Part III reviews the current status of these two treaties in the United States and considers the relevance of, and potential for full participation in the future.

I. CHILDREN WITH DISABILITIES IN HUMAN RIGHTS LAW

The adoption of the CRC by the United Nations in 1989 was followed by its rapid implementation in 1990, and near universal ratification.⁴ The CRC was, and continues to be, rightly heralded as a signal of achievement and progressive development in the human rights framework.⁵ It engendered substantial law and policy reform across the world, pivoted local and international charitable organizations away from paternalistic approaches to child protection and toward the placement of children at the heart of their own human rights recognition, affirming their status as subjects of human rights law.⁶ Nonetheless, the CRC, like other human rights instruments before it, reflects a less progressive turn with respect to how it addresses the rights of children with disabilities.⁷ Article 23 of the CRC emphasizes "special care" as opposed to reasonable accommodations and other accessibility measures that remove barriers and encourage full participation in society.⁸ The CRC does not address the various issues which lie at the center of a progressive disability rights approach for these children.

⁴ See generally CRC, *supra* note 2. As of today, 196 States have ratified the Convention on the Rights of the Child, and the United States and South Sudan remain the only non-participants; see *id.* (latest status of treaty signatures and ratifications).

⁵ *Id.*

⁶ See generally RACHEL HODGKIN & PETER NEWELL, IMPLEMENTATION HANDBOOK ON THE CONVENTION ON THE RIGHTS OF THE CHILD 149 (UNICEF ed., 3d ed. 2007).

⁷ CRC, *supra* note 2, at art. 23.

⁸ *Id.*

The 2006 adoption of the CRPD, by contrast, carves a new path in recognizing the equality of persons with disabilities and places their specific needs for fully recognized human rights within the context of their own lived experience.⁹ It incorporates child-focused and age-related dimensions into its disability rights framework in addition to devoting a general transversally applied provision to ensuring the rights of children with disabilities.¹⁰ As such, it enters new territory in its approach to disability rights. Structurally, the CRPD addresses how child rights are integrated into the treaty text. Substantively, the CRPD addresses how it conceptualizes the rights of children with disabilities. Moreover, the CRPD flips prior formulations of children's rights for disabled children as contingent, partial, and incomplete if they are recognized at all.¹¹

The United States has ratified neither the CRC nor the CRPD, notwithstanding near universal ratification of the two instruments globally: the CRC has 196 ratifications, while the CRPD has 172 ratifications.¹² Together, these treaties have

⁹ CRPD, *supra* note 1, at art. 5.

¹⁰ *Id.* While the Convention on the Rights of the Child devotes a specific article to children with disabilities and does underscore through its non-discrimination clause that discrimination on the basis of disability is prohibited, the Convention on the Rights of Persons with Disabilities takes a stronger structural approach in devoting a general, cross-cutting provision to children with disabilities in Article 6 and further integrating child-related provisions throughout its substantive text. Compare CRC, *supra* note, 2, at arts. 2(1) & 23, with CRPD, *supra* note 1, at art. 7(n).

¹¹ See Declaration on the Rights of Mentally Retarded Persons, G.A. Res. 2856 (XXVI), UN Doc. A/8429 (Dec. 20, 1971). This document soon came under heavy criticism by the disability community for qualifying the scope of rights for people with intellectual disabilities both in providing that "[t]he mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings" and in terms of its goal for societies, which is to promote "their integration as far as possible in normal life." *Id.*

¹² See CRC, *supra* note 2 (latest status on the ratifications of the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities). It should be noted that the United States has,

ushered unprecedented domestic law and policy reform, thus prompting significant shifts both in terms of institutional and programmatic approaches to the realization of the rights of the child and persons with disabilities.

A. Children with Disabilities and the CRC

The CRC, as the most rapidly ratified human rights convention, signaled a major shift in the way that international human rights law accommodated and applied child rights into the human rights framework. It served as the impetus for UN agencies including, most notably, UNICEF and non-governmental organizations across the world to conceive of child related issues in human rights terms.¹³ The CRC compelled human rights organizations to take on children's rights as a part of their mandates, often representing a major extension of their work.

The CRC, for the first time in a core human rights convention, includes disability among its prohibited grounds of discrimination.¹⁴ Structurally, however, the CRC does not explicitly prescribe disability inclusion comprehensively across its framework. Instead, apart from the recognition of disability status in its non-discrimination clause, it compartmentalizes disability rights within a single provision: Article 23.¹⁵ While

however, ratified two protocols: Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2002; and, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2002.

¹³ See Cynthia Price Cohen, *Role of the United States in Drafting the Convention on the Rights of the Child: Creating a New World for Children*, 4 LOY. POVERTY L.J. 185, 193 (1998).

¹⁴ CRC, *supra* note 2, at art. 2(1).

¹⁵ CRPD, *supra* note 1, at art. 23. Reasonable accommodation is defined in the Convention on the Rights of Persons with Disabilities as "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with

children with disabilities are not excluded from the benefits of the provisions throughout the treaty, the rest of the treaty does not attempt to integrate the concerns of children with disabilities apart from Article 23.¹⁶

Therefore, in some respects, the CRC reflects outmoded ideas about children with disabilities. These ideas were very much in line with the state of international human rights law, regarding persons with disabilities generally, at the time of its drafting during the 1980's. Given the gap in coverage in the CRC, to the lived experience of children with disabilities, it is no surprise that the practice of the CRC Committee, lacking much guidance from the text of the treaty, addresses implementation of CRC obligations in respect of children with disabilities, if at all.¹⁷

In 2002, as the drafting of the CRPD was underway, the Office of the High Commissioner of Human Rights released a report detailing whether and how existing treaty bodies were disability inclusive in implementing their respective mandates.¹⁸ The report concluded that the treaty bodies had largely failed to examine the implications of treaty implementation for persons with disabilities. Regarding children with disabilities, the report found that the CRC Committee had not addressed children with disabilities in a consistent ongoing and comprehensive manner.¹⁹ That said, in recent years, and following the adoption of the CRPD, disability rights issues were increasingly reflected in the work of the Committee on the Rights of the Child. In 2006, as

disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms." *Id.* at art. 2.

¹⁶ CRC, *supra* note 2, at art. 23.

¹⁷ GERALD QUINN & THERESIA DEGENER, HUMAN RIGHTS AND DISABILITY: THE CURRENT USE AND FUTURE POTENTIAL OF UNITED NATIONS HUMAN RIGHTS INSTRUMENTS IN THE CONTEXT OF DISABILITY 202 (2002).

¹⁸ *Id.* at 208.

¹⁹ *Id.* at 215–16.

the CRPD was in its final phase of adoption, the CRC Committee adopted a General Comment on children with disabilities.²⁰

B. Child Rights in the CRPD

Early in the drafting of the CRPD, there was no specific provision in the treaty for children with disabilities. Indeed in the Working Group text, the foundational draft developed in the winter of 2004 that formed the basis of future negotiations, did not have any child-specific provision.²¹ At the same time, it was recognized that the shortcomings of the CRC and other international human rights instruments would need to be overcome in any resulting treaty.

As the treaty text evolved, significant attention was directed towards ensuring that children with disabilities received specific attention. As a structural matter, children with disabilities receive attention throughout the treaty text.²² In the Preambular paragraphs of the CRPD, the drafters recognized “that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children” and also call attention to “obligations to that end undertaken by States Parties to the Convention on the Rights of the Child . . .”²³

Procedurally, the CRPD establishes requirements for monitoring State compliance with obligations regarding the human rights of children and adults with disabilities.²⁴ To

²⁰ See Convention on the Rights of the Child, G.A. Res. 43/9, U.N. Doc. CRC/C/GC/9 (Feb. 27, 2007).

²¹ See Ad Hoc Comm. on a Comprehensive and Integral Int'l Convention on the Prot. & Promotion of the Rights & Dignity of Persons with Disabilities, *Report of the Working Grp. to the Ad Hoc Comm.*, U.N. Doc. A/AC.265/2004/WG.1 (Jan. 27, 2004).

²² See CRPD, *supra* note 1, at arts. 3, 4, 7, 18, 23, 24, 30.

²³ *Id.* at pmb. (r).

²⁴ *Id.* at art. 35.

effectuate such monitoring, the CRPD established a Committee on the Rights of Persons with Disabilities.²⁵ The CRPD promotes cooperation between the Committee and other bodies.²⁶ This is significant for extending the rights of children with disabilities into the work of other bodies, including the Committee on the Rights of the Child, for instance, and other treaty bodies. Cooperation is also significant for ensuring that UN bodies such as UNICEF, UNAIDS and others incorporate into their mandates disability inclusive approaches to child protection, child rights and rights-based development.

*C. Protection for children under Article 3 of the CRPD*²⁷

Article 3 of the CRPD highlights that there needs to be “respect for the evolving capacities of children with disabilities.”²⁸ This was a principle that was first set out in the CRC with regard to children generally. It thus requires that the human rights and fundamental freedoms set out in the Convention must be interpreted and applied in a manner that recognizes and accommodates the development of children with disabilities towards adulthood and independence.²⁹ In this way, the concept of “evolving capacities of children with disabilities” is directed towards facilitating the exercise of personal autonomy in decision-making.³⁰ The CRPD thus underscores that the development of children with disabilities, as for all children, should be an enabling and progressive process where supports

²⁵ *Id.* at art. 34.

²⁶ *Id.* at art. 38.

²⁷ ANDREW POWER ET AL., *ACTIVE CITIZENSHIP AND DISABILITY: IMPLEMENTING THE PERSONALISATION OF SUPPORT* 34 (Cambridge Univ. Press 2013).

²⁸ *Id.* (citing CPRD, *supra* note 1, at art. 3).

²⁹ *Id.*

³⁰ *Id.*; CRPD, *supra* note 1, at pmb. (n), (o), art. 3. *See generally* CRPD, *supra* note 1, at art. 4(3) (Dec. 13, 2006) (recognizing as part of the general obligations of States is that their participation in decision-making must include children with disabilities).

are provided to facilitate “maturation, autonomy and self-expression.”³¹ The children’s participation in decision-making processes that affect them, including their right to preserve their identities, should be expanded over time to coincide with this evolution.

The second aspect of protection under Article 3(h) references “respect for the right of children with disabilities to preserve their identities” and is directed towards ensuring that children with disabilities are legally recognized as persons and that their identity is preserved.³² At least two implications connect to this recognition. First, there is affirmation that children with disabilities are endowed with legal personhood. This requires, among other things, registration at birth, which is so essential to protection and access to essential services but too often neglected for disabled children in many contexts.³³ There is also the notion, drawn from the CRC, that “children’s development towards independent adulthood must be respected and promoted throughout childhood.”³⁴ Second, “the idea [expressed in Article 3(h)] is closely linked to the principle of participation, especially Article 12 of the CRC. This section requires that the views of children shall be given³⁵ “due weight in accordance with the age and maturity of the child.”³⁶ “In this regard, it links to the recognition accorded in the CRPD of legal capacity, together with the requirement that appropriate supports be provided to facilitate decision-making. As applied to disability supports, it requires not only support in keeping with the best interests of the child, but also meaningful participation and consultation.”³⁷

³¹ The Convention on the Rights of Persons with Disabilities Training Guide, U.N. Doc. HR/P/PT/19 (2014).

³² CRPD, *supra* note 1, at art. 3; POWER ET AL., *supra* note 27, at 34.

³³ CRPD, *supra* note 1, at arts. 3, 18.

³⁴ POWER ET AL., *supra* note 27, at 34.

³⁵ *Id.*

³⁶ CRC, *supra* note 2, at art. 12.

³⁷ POWER ET AL., *supra* note 27, at 34–5.

D. Stigma and discrimination

Although the CRC recognized disability as a prohibited ground of discrimination, it went no further in mandating the supports necessary in order to achieve equality and non-discrimination for children with disabilities. Moreover, the CRC did not address the stigma that results in discrimination for so many marginalized children around the world. The CRPD, by contrast, addresses the impact of stigma and attitudinal barriers within the general, and thus transversally applied, provisions of the treaty. Stigma is defined here as a process linked to an attribute regarded as undesirable that an individual or group possesses, and that diminishes that person or group's status in the community, including stigma resulting from both actual and perceived disability. Article 8 of the CRPD requires States Parties to raise awareness "throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities."³⁸ Article 8 is understood as a precondition for non-discrimination and equality for children and adults with disabilities.³⁹ The section that follows canvasses how the CRPD is used to amplify the human rights conditions that are found among children with disabilities, and the section discusses which international disability rights advocates are pressing the United States to act through its human rights foreign policy.

³⁸ CRPD, *supra* note 1, at art. 8.

³⁹ *Id.* The understanding of Article 8 is similar to other articles of general application across the text of the CRPD. Article 5 discusses non-discrimination and equality, Article 6 discusses children with disabilities, and Article 9 discusses accessibility. *See, e.g., id.* at art. 5, 6, 9.

II. USING THE CRPD TO ELEVATE THE HUMAN RIGHTS SITUATION OF CHILDREN WITH DISABILITIES

The adoption of the CRPD has served to elevate the human rights situation of children with disabilities and persons with disabilities more generally. The CRPD's progressive framework is being used to amplify human rights violations that are particular to children with disabilities and those that have been largely neglected by the mainstream human rights community. The issues that are trending in the global movement to advance the rights of children with disabilities include efforts to ensure childbirth registration, concealment in the home and abandonment to institutions, access to quality and inclusive education, and exposure of major human rights abuses by repressive regimes.⁴⁰ All of these are issues that should form part of United States human rights foreign policy and leadership on human rights issues. To some extent, these issues are addressed in human rights reporting by the United States, including the annual Department of State Human Rights Reports, which devote a small section to children's rights and the rights of persons with disabilities.⁴¹ References to the specific human rights abuses experienced by children with disabilities in such reporting, however, is sparse.

⁴⁰ See, e.g., Elin Martínez, *Still Out of School in South Africa*, HUMAN RIGHTS WATCH, (Jan. 17, 2017, 2:11 PM), <https://www.hrw.org/news/2017/01/17/still-out-school-south-africa>; *Jordan: Syrian refugees blocked from accessing critical health services*, AMNESTY INTERNATIONAL (Mar. 23, 2016, 5:20 PM), <https://www.amnesty.org/en/latest/news/2016/03/jordan-syrian-refugees-blocked-from-accessing-critical-health-services/>; see generally *Breaking the Silence: Violence Against Children with Disabilities in Africa*, in THE AFRICAN CHILD POLICY FORUM (Gerry Caplan & Lucy Southwood eds., 2010).

⁴¹ See generally U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices (2015).

A. Parental Attitudes, Stigma and Birth Registration

Accounting for whether and how local contexts impact perceptions and attitudes towards children with disabilities and designing strategies accordingly to combat such views is a prerequisite for effective rights realization.⁴² Therefore, it is essential to be attuned to these differences in order to combat stigma effectively and to address disability discrimination. Often, stigma works in combination with more than one attribute, giving rise to vulnerability. Further, negative parental attitudes towards disability poses a tremendous challenge to some children with disabilities in their own homes; these attitudes lead families to isolate, hide or essentially imprison children with disabilities in the family home. This results in denied access to education and unequal access to nutrition compared to siblings without disabilities. Attitudes and beliefs about disability may vary based on disability type. Children with particular forms of disability, such as deafness, blindness or intellectual impairment, are often particularly vulnerable to prejudicial attitudes within the home, as reported by the African Child Policy Forum in a survey on parental attitudes:

If you look at these children in a home setting the deaf blind child is very often marginalized. While others are eating good food, this child is left to be alone. I have seen cases of deaf blind children of up to 10, 14 years old, who still have not learned how to chew food because from their childhood their parents have resorted to just feeding the child with liquid or mashed material.⁴³

In some instances, responsibility for a child's disability is falsely attributed to the mother, resulting in the husband and his family abandoning the mother and rejecting responsibility for the

⁴² See CRPD, *supra* note 1, at art. 8.

⁴³ *Access Denied: Voices of persons with disabilities from Africa*, THE AFRICAN CHILD POLICY FORUM 13 (2014).

disabled child.⁴⁴ In other instances, specific types of disabilities are regarded as a curse or ill omen attributable to witchcraft or sorcery.⁴⁵ For example, in Cote d'Ivoire, disability activists explain a widely held view, especially in rural areas, that children with disabilities are possessed and frequently referred to as "snake children."⁴⁶

These resulting human rights abuses are rooted in disability-related stigmatization and include concealment of children with disabilities in the home and denial of access to education, health, rehabilitation, and other social services.⁴⁷ Further, identification of children with disabilities is made difficult in communities where parents, due to stigma, fail to register their disabled children at birth. Aware of this challenge, some countries have enacted legislation that criminalizes acts of hiding and concealing children with disabilities. According to section 35 of the Sierra Leone Persons with Disability Act 3 of 2011, a parent, guardian, or next-of kin or caregiver who conceals a person with disability, or fails to register a child with a disability, is guilty of a criminal offense.⁴⁸ A similar provision is contained in section 45 of the Persons with Disabilities Act of 2003 of Kenya.⁴⁹ While stigma and the discrimination that it foments cannot be erased, the CRPD recognizes the socializing effects of

⁴⁴ *Id.* at 14.

⁴⁵ *Id.* at 12 (statement of Teshome Deressa) ("And so the perception that says that disability is a Godly curse still is existing in the community . . . so, many children with disabilities are kept at home . . . If you go to rural communities in many parts of the country, children with disabilities are not taken into public, or to schools or any other social services.").

⁴⁶ Interview with District Project Officer advocates, in Abidjan, Cote d'Ivoire (Jan. 29–Feb. 3, 2017).

⁴⁷ *Id.*

⁴⁸ Persons with Disability Act, No. 3, § 35 (Sierra Leone) (2011).

⁴⁹ Persons with Disabilities Act, No. 14 § 45 (Kenya) (2003) ("No parent, guardian or next of kin shall conceal any person with a disability in such a manner as to deny such a person the opportunities and services available under this Act.").

community inclusion for children with disabilities and thus signifies a major break from perspectives that saw social programs as a way of managing or merely maintaining disabled children. The CRPD also affirms the right of people with disabilities to develop their creative, artistic, and intellectual potential for both individual and societal benefit.⁵⁰

B. Exposing Violence and Abuse

The lack of community supports for persons with disabilities and their families enhances their risk for violence, exploitation and abuse.⁵¹ Emerging evidence documents the link between human trafficking and those with disabilities. Most notable is the connection for young adults with disabilities transitioning out of orphanages, women housed in psychiatric hospitals, and other categories of disabled persons.⁵² The isolation and segregation of children with disabilities—whether in their own homes or in institutional settings—serves to shield abusers from exposure. Stigma and exploitation of parental despair contribute to the conditions within which violence and abuse can flourish. The CRC, together with the CRPD, outlines specific protection measures that must be accorded to children. The CRC Committee's 2006 General Comment 9 recognizes that children with disabilities are particularly at risk for violence, abuse, and

⁵⁰ POWER ET AL., *supra* note 27, at 45; CRPD, *supra* note 1, at art. 30.

⁵¹ See generally *Our Reports and Publications*, DISABILITY RIGHTS INT'L, <http://www.driadvocacy.org/media-gallery/our-reports-publications/> (last visited Apr. 19, 2017) [hereinafter *DRI Reports*]. Disability Rights International (formerly Mental Disability Rights International) has documented egregious human rights violations against children with disabilities in institutional settings, such as orphanages, social care homes, and psychiatric hospitals. *Id.*

⁵² PRISCILLA RODRIGUEZ ET AL., *No Justice: Torture, Trafficking and Segregation in Mexico*, in DISABILITY RIGHTS INT'L (July 22, 2015), http://www.driadvocacy.org/wp-content/uploads/Sin-Justicia-MexRep_21_Abr_english-1.pdf.

exploitation.⁵³ The CRPD, echoing the prohibition against violence, exploitation, and abuse in the CRC, proscribes such treatment and imposes obligations on States to undertake measures that will help prevent such abuse and further provide support and rehabilitation to survivors.⁵⁴

Traditionally, human rights practice has paid little attention to the specific conditions that give rise to egregious human rights abuses against children and adults with disabilities. This is illustrated in the 2002 report, which demonstrates a lack of attention to disability rights issues within the UN human rights system and in the work of the mainstream human rights organizations.⁵⁵

The CRPD recognizes not only the need to take into account child-specific issues and provide age-appropriate accommodations where needed, but also the gender dimension of disability discrimination.⁵⁶ There is a strong gender dimension to the stigma and discrimination that children with disabilities experience. It is well recognized in research and human rights documentation that girls with disabilities are subjected to discrimination based both on their disability status and their gender.⁵⁷ Girls with disabilities are often the last to receive the necessary support—such as education, employment, and appropriate general health care services—to enable them to

⁵³ CRC, *supra* note 2, at arts. 23, 32–37, 39.

⁵⁴ CRPD, *supra* note 1, at arts. 15, 16.

⁵⁵ See generally QUINN & DEGENER, *supra* note 17, at 135; see generally JANET E. LORD, *Disability Rights and the Human Rights Mainstream: Reluctant Gatecrashers?*, in THE INTERNATIONAL STRUGGLE FOR NEW HUMAN RIGHTS 83 (Clifford Bob ed., 2008); see also Janet E. Lord, *Mirror, Mirror on the Wall: Voice Accountability and NGOs in Human Rights Standard Setting*, 5 SETON HALL J. DIPL. & INT'L REL. 93 (2004).

⁵⁶ CRPD, *supra* note 1, at arts. 6, 7.

⁵⁷ *Id.* at art. 6; see also Stephanie Ortoleva, *Inaccessible Justice: The Human Rights of Persons with Disabilities in the Justice System*, 17 ILSA J. INT'L & COMP. L. 281, 297 (2011).

overcome poverty and lead productive and fulfilling lives.⁵⁸ “They are at higher risk for abuse and violence, which can, in turn, aggravate existing disabilities or create secondary disabilities, such as psychosocial trauma.”⁵⁹ As amply documented by Professor Nora Groce, in some African countries there is a popular belief that individuals with a sexually transmitted disease, such as HIV/AIDS, can rid themselves of the disease through intercourse with a virgin. The assumption that girls with disabilities are asexual, and therefore virgins, places them at particular risk for “virgin rape.”⁶⁰ The adoption of the CRPD has generated more attention to such abuses against children with disabilities and research of the kind conducted by Groce and others to better understand and tackle violence against children with disabilities.

C. Ending Segregation in Institutions and Advancing Community Integration

The increased awareness of harm caused by isolation and segregation of children and adults with disabilities has generated a global campaign to end institutionalization.⁶¹ Article 19 of the

⁵⁸ See WORLD REPORT ON DISABILITY, WORLD HEALTH ORGANIZATION [WHO] (SALLY HARTLEY, ET. AL. eds., 2011), http://apps.who.int/iris/bitstream/10665/70670/1/WHO_NMH_VIP_11.01_eng.pdf.

⁵⁹ JANET E. LORD ET AL., HUMAN RIGHTS. YES! ACTION AND ADVOCACY ON THE RIGHTS OF PERSONS WITH DISABILITIES (Nancy Flowers ed., 2d ed. 2007) [hereinafter HUMAN RIGHTS. YES!].

⁶⁰ NORA GROCE & RESHMA TRASI, *Rape of individuals with disability: AIDS and the Folk Belief of Virgin Cleansing*, 363 THE LANCET 1663–64 (2004).

⁶¹ See generally *The Worldwide Campaign to End the Institutionalization of Children*, DISABILITY RIGHTS INT’L, <http://www.driadvocacy.org/learn-about-the-worldwide-campaign-to-end-the-institutionalization-of-children/> (last visited Apr. 11, 2017) [hereinafter *Worldwide Campaign*]; see also Naomi Larsson, *Out of Sight: The Orphanages Where Disabled Children are Abandoned*, THE GUARDIAN, (Sept. 26, 2016), <https://www.theguardian.com/global-development-professionals->

CRPD exhorts states parties to establish programs of deinstitutionalization. It clarifies that children with disabilities have the right to live independently in the community and to choose their place of residence.⁶² Article 19 of the CRPD, on living independently and in the community, reflects an extension of the right to liberty, namely, the freedom to choose one's own living arrangements.⁶³ Commentators have noted that the CRPD embraces and articulates, for the first time in an international human rights treaty, the right to community integration.⁶⁴ Article 19 is specifically directed at the elimination of segregated, congregate and socially isolated environments in which persons with disabilities have historically been forced, or obliged, to live.⁶⁵ During treaty negotiation, the CRPD was particularly concerned with the elimination of living arrangements, which segregated and isolated persons with disabilities (e.g., institutions, social care homes, group homes, orphanages) because it represented the choices of others. States Parties are required to ensure that persons with disabilities are able to live *in the community* with living arrangements equal to others.⁶⁶ This requires services that "support living and inclusion in the community, and to 'prevent isolation or segregation from the community.'"⁶⁷

network/2016/sep/26/orphanage-locked-up-disabled-children-lumos-dri-human-rights.

⁶² CRPD, *supra* note 1, at art. 19.

⁶³ *Id.*

⁶⁴ *Id.*; ERIC ROSENTHAL & ARLENE KANTER, *The Right to Community Integration for people with Disabilities Under United States and International Law*, in DISABILITY RIGHTS LAW AND POLICY: INTERNATIONAL AND NATIONAL PERSPECTIVES 309–68 (S. Yee & M. Breslin eds., 2002).

⁶⁵ Michael Stein & Gerard Quinn, *Challenges in Realising the Right to Live in the Community*, in FOCUS ON ARTICLE 19 OF THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES 27, 37 (Ines Bulic' & Camilla Parker eds., 2009).

⁶⁶ CRPD, *supra* note 1, at art. 19.

⁶⁷ *Id.*

The adoption of the CRPD has created the much-needed impetus for ending institutionalization of children with disabilities. In countries around the world, including in the United States, children with disabilities continue to be confined in institutions where they lose independence. Reports issued by Disability Rights International and Mental Disability Advocacy Center detail conditions for people with physical and mental disabilities warehoused in dismal and dangerous institutions.⁶⁸ These details include unhygienic detention, excessive use of physical restraints, lack of adequate food, water, clothing and medical care, and other life threatening conditions, such as patients freezing to death.⁶⁹ It is still the case that national policies are oriented towards improving—and thus reinforcing—institutional care as opposed to promoting community-based living.⁷⁰ The Lumos Foundation's works on ending

⁶⁸ See *Out of Sight: Human Rights in Psychiatric Hospitals and Social Care Institutions in Croatia*, MENTAL DISABILITY ADVOCACY CTR. AND THE ASS'N FOR SOCIAL AFFIRMATION OF PEOPLE WITH MENTAL DISABILITIES (2011),

http://mdac.info/sites/mdac.info/files/croatiareport2011_en.pdf; see also ERIC ROSENTHAL, *A Mandate to End Placement of Children in Institution and Orphanages: The duty of governments and donors to prevent segregation and torture*, in PROTECTING CHILDREN AGAINST TORTURE IN DETENTION: GLOBAL SOLUTIONS FOR A GLOBAL PROBLEM, AM. U. WASH. C. OF L. CTR. FOR HUM. RTS. & HUMANITARIAN L. 303, <http://www.driadvocacy.org/wp-content/uploads/Rosenthal-Torture-seg-Feb16.pdf>; see generally HUMAN RIGHTS. YES!, *supra* note 59 (stating that “[p]hysical and mental abuses and gross neglect endangering the lives of people with disabilities housed in institutional facilities are widespread”); see also *DRI Reports*, *supra* note 51 (listing reports from DRI on ill-treatment of persons with disabilities in institutions); see also *Resources*, MENTAL DISABILITY ADVOC. CTR., <http://mdac.info/en/resources?goal=139&format=144> (listing reports from MDAC on ill-treatment of persons with disabilities in institutions).

⁶⁹ ROSENTHAL, *supra* note 68, at 320.

⁷⁰ This is the case for Bulgaria, for example, where, as ANED comments, national debate is focused on improving the quality of institutional care, rather

institutionalization in Europe and more recently Haiti in particular reinforces these findings.⁷¹ Disturbing evidence based on human rights reporting in Guatemala reveals a pattern of trafficking women warehoused in a dismal psychiatric institution across the street into the male prison and is currently before the Inter-American Commission on Human Rights in a precautionary measures proceeding.⁷² While the links between institutionalization of persons with disabilities and human trafficking are increasingly understood, they have not attracted the attention of investigative bodies.⁷³

Campaigning by UNICEF and international NGOs is beginning to send the message to States that orphanages are not

than creating conditions for children and adults to live in their own communities. It should be noted though that some small steps towards independent living are currently taken. Kapka Panayotova, *ANED country report on the implementation of policies supporting independent living for disabled people: Bulgaria*, 3 (2009), http://www.disability-europe.net/content/pdf/BG-6-Request-07%20ANED_2009_Task_5_template_Bulgaria_to%20publish_to%20EC.pdf.

⁷¹ See GEORGETTE MULHEIR ET AL., DE-INSTITUTIONALIZING AND TRANSFORMING CHILDREN'S SERVICES: A GUIDE FOR GOOD PRACTICE 25 (2012).

⁷² See *Precautionary Measures Petition*, DISABILITY RTS. INT'L 7 (Oct. 12, 2012), <http://www.driadvocacy.org/wp-content/uploads/DRI-Guatemala-Precautionary-Measures-FINAL.doc>.

⁷³ Eric Mathews, et al., *No Way Home: The Exploitation and Abuse of Children in Ukraine's Orphanages*, DISABILITY RTS. INT'L, 30 (2015), <http://www.driadvocacy.org/wp-content/uploads/No-Way-Home-final2.pdf>; see also U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Trafficking in Persons Report, (2014), <http://www.state.gov/j/tip/rls/tiprpt/2014/> (noting that "Children in orphanages and crisis centers continue to be particularly vulnerable to trafficking within Ukraine."); *Guatemala: Precautionary Measures Petition to the Inter-American Commission on Human Rights*, DISABILITY RTS. INT'L (2014); Randall C. Archibold, *Commission Calls on Guatemala to Protect Patients*, N.Y. TIMES (Nov. 29, 2012), http://www.nytimes.com/2012/11/30/world/americas/commission-calls-for-guatemala-to-protect-patients.html?_r=2.

safe places for any children and that very often they are no more than dingy and dangerous warehousing arrangements for children with disabilities who have parents.⁷⁴ Work by the Lumos Foundation and others is highlighting the under-appreciated fact that the majority of children placed in orphanages around the world of course are not orphans—they have parents who have abandoned them or handed them over as a result of failures of community supports. Europe succeeded in stopping new placements and building transition plans with quality community-based alternatives. The Council of Europe's Committee of Ministers adopted a *Recommendation on Deinstitutionalization and Community Living of Children with Disabilities*, which reflects the decisive pivot away from segregation in favor of community based living arrangements within a framework of responsible transition away from institutionalization.⁷⁵ It emphasizes “the fact that placing children in institutionalized forms of care raises serious concerns as to its compatibility with the exercise of children’s rights”⁷⁶ and recommends that governments take measures “in order to replace institutional provision with community-based services without a reasonable timeframe and through a comprehensive approach.”⁷⁷

The implications of the CRPD are quite clear—instead of allocating resources towards rebuilding segregated institutions, such resources should be used to provide proper support for persons with disabilities to live in their respective communities.⁷⁸

⁷⁴ See, e.g., Joint press release: OHCHR, UNICEF launch campaign to protect children, prevent harmful and unnecessary institutionalization, UNICEF (June 28, 2001) https://www.unicef.org/media/media_59030.html.

⁷⁵ LISA WADDINGTON ET AL., *Recommendation CM//Rec 2 (2010) of the Committee of Ministers to Member States on Deinstitutionalization and Community Living of Children with Disabilities*, EUR. Y.B. DISABILITY L. 385–94 (2010).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Worldwide Campaign*, *supra* note 61 (Disability Rights International highlights the problem in regard to children in institutions and reports

United States human rights foreign policy—and the policies of other bilateral and multilateral donors—should support community-based supports for persons with disabilities and well-planned and resourced transitions from institutional care. Further, human rights reporting by the United States, including that of the Department of State, should highlight practices of institutionalization and expose public and private funds used to perpetuate institutionalization, among other measures, to discredit the still widely held view that funding orphanages and other congregate care institutions is an acceptable approach for caring for children and adults with disabilities.

D. Legal Capacity and Support in Decision-making

A major barrier to the full and equal participation of persons with disabilities in society is the lack of legal recognition—often written into law—of individuals with disabilities.⁷⁹ Restrictive laws and practices often prevent persons with disabilities (especially those with mental, intellectual and psychosocial disabilities) from exercising their full legal capacities.⁸⁰ In some countries, harsh and out-of-date guardianship laws prevent many people with disabilities from making decisions about how they wish to lead their lives. Too often, substituted decision-making is

“governments and international donors spend millions worldwide building and rebuilding these torture chambers for children with disabilities instead of supporting families, substitute families when necessary and community services and education.”).

⁷⁹ Convention on the Rights of Persons with Disabilities, General comment No. 1 (2010), art. 12, U.N. Doc. CRPD/C/GC/1 (May 19, 2014); see also Anna Arstein-Kerslake & Eilionoir Flynn, *The General Comment on Article 12 of the Convention on the Rights of Persons with Disabilities: A Roadmap for Equality Before the Law*, 20 INT’L J. HUM. RTS. 471, 476 (2016).

⁸⁰ In June 2013, the Australian Law Reform Commission was given a reference to inquire into how to reduce legal barriers to people with disabilities. *Equality, Capacity and Disability in Commonwealth Laws*, AUSTL. L. REFORM COMM. 244, 245, 248 (Aug. 29, 2014), https://www.alrc.gov.au/sites/default/files/pdfs/publications/alrc_124_whole_pdf_file.pdf.

imposed on disabled persons when they could, with supports make decisions for themselves. This is particularly the case for persons with psycho-social and developmental disabilities, although it impacts individuals with disabilities generally.

Equal recognition before the law mandates that all persons with disabilities have full legal capacity and obliges States Parties to support persons with disabilities to exercise their legal capacity and to put in place safeguards to ensure that abuse does not occur.⁸¹ The CRPD addresses this by reaffirming that persons with disabilities have the right to full and equal legal recognition and, further imposes on States the obligation to provide support, when they are required to facilitate decision-making. A component of this requirement is supporting children and youth with disabilities in their development and facility to be able to make decisions and successfully navigate the transition to adulthood.⁸² Paternalistic approaches can undermine such efforts and serve as a major barrier to living in the community as an adult with a disability.

Some progress is being made in the United States to help the transition of children with disabilities to adulthood and to ensure that they can make decisions with the support they need.⁸³ While sweeping guardianship regimes continue to be the norm for many adults with intellectual disabilities, new models of supported

⁸¹ See CRPD, *supra* note 1, art. 12; see also Gerard Quinn, Personhood and Legal Capacity: Perspectives in the Paradigm Shift of Art. 12 CRPD (Feb. 20, 2010) (presented at Harvard Project on Disability Conference).

⁸² See Robert Dinerstein, *Implementing Legal Capacity Under Article 12 of the UN Convention on the Rights of Persons with Disabilities: The Difficult Road from Guardianship to Supported Decision-Making*, 19 HUM. RTS. BRIEF 1–5 (2012); PETER BLANCK & JONATHAN G. MARTINIS, “The Right to Make Choices”: *The National Resource Center for Supported Decision-Making*, 3 INCLUSION 24–33 (2015).

⁸³ Dinerstein, *supra* note 82, at 3; BLANCK & MARTINIS, *supra* note 82, at 28.

decision-making are emerging and receiving the imprimatur of courts.⁸⁴

E. Inclusion in Education

The disability stigma that fuels discrimination, isolation and segregation and exacerbates deprivation and human rights violations against children with disabilities severely impacts access to education. Outright exclusion from education—the prevailing norm for children with disabilities in developing countries—or segregation in sub-standard school settings create lifelong barriers to economic opportunity.⁸⁵ Only 2% of children with disabilities in developing countries attend school.⁸⁶ Gender bias results in low literacy and education rates for women and girls with disabilities. Further, disability discrimination combined with gender discrimination serves to keep girls with disabilities out of school as parents may see little reason to send girls with disabilities to school as they do not think their child can be educated or will benefit from school. UNESCO estimates that the literacy rate for persons with disabilities worldwide is only 3%, while rates for women and girls with disabilities are about 1%.⁸⁷

The CRPD supports the right of children with disabilities to an inclusive education on an equal basis with others. Article 24 on education applies to all levels (i.e. primary, secondary and higher education) and requires the observance of non-discrimination on the basis of disability. It also requires States to

⁸⁴ See, e.g., *The Justice for Jenny Trial*, THE JENNY HATCH PROJECT, <http://jennyhatchjusticeproject.org/trial> (last visited Apr. 19, 2017).

⁸⁵ Convention on the Rights of Persons with Disabilities, General Comment No. 4 (2016), art. 24: Right to Inclusive Education, ¶¶ 2, 8, U.N. Doc. CRPD/C/GC/4 (Sep. 2, 2016).

⁸⁶ David Mitchell, *Education that Fits: Review of International Trends in the Education of Students with Special Educational Needs*, 121 (2010), https://www.educationcounts.govt.nz/_data/assets/pdf_file/0016/86011/Mitchell-Review-Final.pdf.

⁸⁷ Nora Groce, *Women with Disabilities in the Developing World*, 8 J. DISABILITY POL'Y STUD. 177, 183 (1997).

provide reasonable accommodations to students with disabilities in order to facilitate access to education.⁸⁸ The requirements of the CRPD include ensuring that the educational system is: (1) open and accessible to children and other learners with disabilities; (2) addressing systemic barriers (e.g., law, policy and institutional); and (3) requiring school systems to accommodate the diversity and difference of disability.⁸⁹

The framework developed by the Special Rapporteur on the Right to Education, in combination with the principle of inclusion, helps to clarify the content of the right to *inclusive education* as reflected in the CRPD.⁹⁰ Inclusion in the context of the CRPD, and other international instruments, favor transition from separate, segregated learning environments for persons with disabilities to schooling within the general education system *with the necessary supports* to make inclusion meaningful.⁹¹ Thus inclusion is an integral component of the analytical framework

⁸⁸ Hum. Rts. Council, Rep. of the Special Rapporteur on the right to educ., Vernor Muñoz, U.N. GAOR, 4th Sess., ¶ 34, U.N. Doc. A/HRC/4/29 (Feb. 19, 2007).

⁸⁹ CRPD, *supra* note 1, art. 24.

⁹⁰ Econ. & Soc. Council, Preliminary Report of the Special Rapporteur on the Right to Education, Ms. Katarina Tomasevski, Submitted in Accordance with Commission on Human Rights Resolution 1998/33, ¶ 42, U.N. Doc E/CN.4/14999/49 (Jan. 13, 1999) [hereinafter Tomasevski].

⁹¹ *How is inclusion defined?*, GUIDELINES FOR INCLUSION: ENSURING ACCESS TO EDUCATION FOR ALL 13, 15 (U. N. Educ., Sci. and Cultural Org. 2005) (UNESCO's Guidelines for Inclusion: Ensuring Access to Education for All provides the following definition: "Inclusion is seen as a process of addressing and responding to the diversity of needs of all learners through increasing participation in learning, cultures and communities, and reducing exclusion within and from education. It involves changes and modifications in content, approaches, structures and strategies, with a common vision which covers all children of the appropriate age range and a conviction that it is the responsibility of the regular system to educate all children . . . Inclusion is concerned with the identification and removal of barriers.").

comprised of *accessibility, availability, acceptability, and adaptability* as applied to children with disabilities.⁹²

As part of accessibility, non-discrimination and equality obligations require that reasonable accommodation and other positive measures be accorded to facilitate inclusion in education. Further, Article 9 of the CRPD on accessibility obligates States to ensure that persons with disabilities are able to gain access to the physical environment, to transportation, and to information and communications, and to live and work independently in the community.⁹³

Relatedly, the CRPD in Article 30 recognizes that intellectual property provisions should not impose barriers on persons with disabilities regarding access to cultural materials.⁹⁴ This is a crucial element of accessibility to educational materials for those with print disabilities. Following the adoption of the CRPD, efforts to develop a treaty addressing the issue of access and intellectual property for print-disabled individuals commenced and resulted in the adoption of the Marrakesh Treaty.⁹⁵ The treaty seeks to ensure full access to published works for all persons who are print-disabled. Under the treaty, States are required to identify and remove barriers, including intellectual property law restrictions, which prevent individuals who are print-disabled from accessing written material. The treaty reflects American law and is especially important for countries with

⁹² See Tomasevski, *supra* note 90, at 18.

⁹³ CRPD, *supra* note 1, at art. 9.

⁹⁴ *Id.* at art. 30(3) (“States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.”).

⁹⁵ The Marrakesh Treaty is officially titled the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled. World Intellectual Property Organization (WIPO), Main Provisions and Benefits of the Marrakesh Treaty, 2-3 (2013).

under-developed disability law protections and intellectual property law frameworks. The adoption of the treaty by the World Intellectual Property Organization (WIPO) has garnered broad support from states, publishing companies, and persons with disabilities.⁹⁶ It ought to form part of American foreign policy agenda and should be ratified by the United States Senate to provide the impetus for other States to provide the level of access required for full and complete education for persons with disabilities.

Finally, and of special important for advancing inclusive education in the coming fifteen years, is the new international development agenda adopted in September 2015. The commitment to ensure disability inclusion in the post-2015 development agenda—the successor to the Millennium Development Goals—was signaled by the General Assembly’s convening of a High-Level meeting on Disability and Development at the level of Heads of State and Governments. There, the General Assembly committed to achieving all internationally agreed development goals for persons with disabilities, as well as to mainstream disability in all development efforts.⁹⁷

F. Accommodating Children with Disabilities in Immigration Law and Policy

In establishing that children with disabilities require special protection, the CRPD also incorporates other international law

⁹⁶ See generally *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Disabled or Otherwise Print Disabled*, WIPO, <http://www.wipo.int/treaties/en/ip/marrakesh/> (last visited April 19, 2017).

⁹⁷ Outcome document of the high-level meeting of the General Assembly on the realization of the Millennium Development Goals and other internationally agreed development goals for persons with disabilities: the way forward, a disability-inclusive development agenda towards 2015 and beyond, G.A. Res. 68/150, ¶ 1–2, U.N. Doc. A/68/L.1 (Sep. 17, 2013).

standards into its ambit. This puts into sharp relief protections to be accorded to child migrants and refugees. Of particular concern are conditions under which children with disabilities who are migrants and their families are treated in conditions of detention. Further, concerns arise as to the rights of children with disabilities and their families for resettlement to a third country from their first place of refuge.

Human rights reporting suggests that recent detention and removal processes, including raids undertaken by the Immigration and Customs Enforcement agency, are contrary to Section 504 of the Rehabilitation Act of 1973.⁹⁸ In the United States, public attention has focused on whether and how due process is afforded to those detained and the appropriateness of the treatment of those detained individuals who may have Post Traumatic Stress Disorder (PTSD) or other disabilities. This concern is especially raised with regard to many of the unaccompanied minors making their way into the United States after long journeys from Central America.⁹⁹ An increased concern is the impact on at-risk children of the Executive Order and other measures taken by President Trump at the very start of his administration.¹⁰⁰ Early reporting indicates that the travel bans relating thus far to seven countries are impacting refugee children seeking medical rehabilitation in the United States and other reports suggest that the psychological toll on children created by the threat of deportation for undocumented immigrants.¹⁰¹ The detention of medical doctors with J-1 visas is

⁹⁸ *Rehabilitation Act of 1973*, 29 U.S.C. § 701 (1973).

⁹⁹ See Amnesty Int'l, *Home Sweet Home? Honduras, Guatemala and El Salvador's Role in a Deepening Refugee Crisis* (2016), <https://www.amnesty.org/en/documents/amr01/4865/2016/en/>.

¹⁰⁰ Exec. Order No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017), <https://www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states>.

¹⁰¹ Olga Khazan, *The Toxic Health Effects of Deportation Threat: The Fear of Immigration Raids Can Harm Children's Brains and Health, Potentially for Life*, ATLANTIC (Jan. 27, 2017),

likewise creating concerns, as a recent case of a physician attempting to enter the United States to return to her Cleveland Clinic job following a vacation to her native Iran.¹⁰²

Detainees with disabilities are afforded legal protection under the Rehabilitation Act, which expressly prohibits discrimination on the basis of disability in federally conducted activities.¹⁰³ Further, that legal framework obligates the Departments of Homeland Security, Justice, Health and Human Services, State and the U.S. Agency on International Development to undertake measures within their jurisdiction to ensure that alleged illegal aliens, who may have a disability, are treated in a manner consistent with the Rehabilitation Act's implementing regulations applicable to their respective departments. Pursuant to international standards under the CRPD and human rights law, measures of this kind ought to include (1) appropriate training of personnel in how to interact with alleged illegal aliens with disabilities; (2) availability and use of mental health experts pre-raid, during-raid, and post-raid times; (3) availability of accessible detention centers and other facilities used for detention; (4) availability of communications, directions and forms in multiple accessible formats and languages, including signed languages where appropriate; (5) availability of technical assistance by expert disability NGOs to deportees' home countries' repatriation service providers to ensure that placement into safe and accessible environments; and (6) support personnel to assist persons in detention facilities in filling out forms,

<https://www.theatlantic.com/health/archive/2017/01/the-toxic-health-effects-of-deportation-threat/514718/>.

¹⁰² Lindsay Buckingham, "Cleveland Clinic doctor denied entry to US amid Trump's executive order," FOX NEWS (Jan. 29, 2017), <http://fox8.com/2017/01/29/cleveland-clinic-doctor-denied-entry-to-us-amid-trumps-executive-order>; see also Ahmad Masri & Mourad H. Senussi, *Perspective, Trump's Executive Order on Immigration — Detrimental Effects on Medical Training and Health Care*, NEW ENG. J. MED. (Feb. 1, 2017), <http://www.nejm.org/doi/full/10.1056/NEJMp1701251#t=article>.

¹⁰³ Rehabilitation Act § 794d(f)(2).

explaining procedures, ensuring that communication is accessible, and assisting in activities of daily living. The worldwide refugee crisis is creating significant pressures on families with disabled family members and disability advocates in the United States are increasingly concerned that further measures expected to be taken by the Trump Administration will place severe limits on immigration by families whose disabled children or other family members require supports.¹⁰⁴ A leaked memorandum obtained by the *Washington Post*, for instance, suggests that another Executive Order may be forthcoming that seeks to focus attention on refusing entry on those who may be “likely to become a public charge.”¹⁰⁵ This harkens back to a bygone era where persons with disabilities were denied entry solely on the basis of their disability and irrespective of their financial or work status.

G. Ending Impunity: Disability-cognizant, child-focused fact-finding

Disability-based persecution against children with disabilities has a long history although it has not been a focus of mainstream human rights reporting.¹⁰⁶ The Nazi-era persecution of children (and adults) with disabilities led to the formulation of some major human rights standards. These included,¹⁰⁷ for example,

¹⁰⁴ ARC, *Leaked Draft Executive Order That Would Impact People with Disabilities Legally Residing in the US and Seeking to Legally Immigrate*, ARC BLOG (Feb. 2, 2017), <https://blog.thearc.org/2017/02/02/arc-leaked-draft-executive-order-impact-people-disabilities-legally-residing-us-seeking-legally-immigrate/>.

¹⁰⁵ *Draft executive orders on immigration*, WASH. POST (Jan. 23, 2017), <http://apps.washingtonpost.com/g/documents/national/draft-executive-orders-on-immigration/2315/>.

¹⁰⁶ Janet E. Lord, *Shared Understanding or Consensus-masked Disagreement? The Anti-torture Framework in the Convention on the Rights of Persons with Disabilities*, 33 LOYOLA L. REV. 27, 31 (2011).

¹⁰⁷ 2 Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10, 8-10 (1950) (The United States played a major role in bringing to justice Nazi war criminals. Sixteen of the accused

the Nuremberg Code¹⁰⁸ prohibiting research and experimentation without informed consent, later reflected in the anti-torture prohibition in the Covenant on Civil and Political Rights.¹⁰⁹ An estimated 300,000 disabled persons were involuntarily sterilized in Nazi Germany, prior to the outset of World War II and some 75,000 soon thereafter. Between 200,000 and 250,000 disabled people—many of them children—were murdered during the period 1939-1945 under various “euthanasia” programs.¹¹⁰ American eugenic practices resulted in forced sterilization of children and adults with disabilities, and was notoriously ratified by the Supreme Court in the infamous *Buck v. Bell* decision in which a young woman was sterilized under a Virginia statute.¹¹¹

Many disability-based violations and abuses that are now increasingly documented in human rights reporting documents provide strong evidence of conduct amounting to crimes against humanity.¹¹² The emerging repository of reporting on egregious

were found guilty, and seven were sentenced to death). Matthew Lippman, *The Nazi Doctors Trial and the International Prohibition on Medical Involvement in Torture*, 15 LOY. L.A. INT'L & COMP. L. REV. 395, 434 (1993) available at <http://digitalcommons.lmu.edu/ilr/vol15/iss2/3>.

¹⁰⁸ Encyclopedia of Genocide and Crimes Against Humanity, Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10, 180–81 (1949).

¹⁰⁹ Int'l Covenant on Civ. and Pol. Rts., G.A. Res. 2200A (XXI), art. 7, U.N. Doc. A/RES/21/2200 (Dec. 16, 1966) [hereinafter ICCPR].

¹¹⁰ 1, Janet E. Lord, ENCYCLOPEDIA OF GENOCIDE AND CRIMES AGAINST HUMANITY, PEOPLE WITH DISABILITIES 257 (2004). See Lippman, *supra* note 107 (for more on abuses perpetrated by Nazi physicians). See *Disability Rights Advocates*, in *Forgotten Crimes: The Holocaust and People with Disabilities* 29 (2001) (detailing abuse against children and adults with disabilities in Nazi Germany).

¹¹¹ *Buck v. Bell*, 274 U.S. 200, 205–07 (1927).

¹¹² LAURIE AHERN ET AL, *Hidden Suffering: Romania's Segregation and Abuse of Infants and Children with Disabilities*, MENTAL DISABILITY RIGHTS INT'L 7 (2006), http://www.driadvocacy.org/wp-content/uploads/romania-May-9-final_with-photos.pdf; See *Disability Rights Advocates*, in *Forgotten Crimes: The Holocaust and People with Disabilities* at 29 (2001) (Detailing abuses against children and adults with disabilities in Nazi Germany).

cases of disability-based persecution should unquestionably inform human rights investigations, including those carried out by governmental national and international bodies. A disability-cognizant approach to human rights fact-finding in some of the most serious instances of State oppression has, unfortunately, been largely missing. Of particular note, for instance, is the reporting on human rights country conditions in North Korea where successive years of documentation is beginning to form an overwhelming picture of gross human rights violations.¹¹³

This evidence suggests that children with disabilities fare very poorly in North Korea. A physician defector reported that the killing of newborns with disabilities was widespread and commonplace and that “‘there are no babies with physical defects in North Korea’ because they are killed in hospitals or at home and ‘quickly buried.’”¹¹⁴ Interviews with other defectors conducted by KINU and autobiographical accounts appear to support such claims of disability-related infanticide.¹¹⁵ The UN Committee on the Rights of the Child repeatedly expressed concern over de facto discrimination against children with disabilities and the inadequacy of state measures to ensure

¹¹³ See J. LORD & JAE-CHUN WON, *Missed Opportunity? UN Report Describes Human Rights Abuses but Leaves out the Status of the Disabled*, KOREAN Q 13, 13 (Summer 2014).

¹¹⁴ Michael L. Perlin, “*Striking for the Guardians and Protectors of the Mind*”: *The Convention of the Rights of Persons with Mental Disabilities and the Future of Guardianship Law*, 117 PENN ST. L. REV. 1159, 1183 (2013); LEE AERAN ET AL., *Disabled in North Korea Confined to Homes, Expelled From Capital*, RADIO FREE ASIA (June 13, 2006), http://www.rfa.org/english/korea/nkorea_disabled-20070613.html; DAMIEN MCELROY, *North Korea Locks Up Disabled in 'Subhuman' Gulags, Says UN*, TELEGRAPH (Oct. 21, 2006, 12:01 AM), <http://www.telegraph.co.uk/news/worldnews/1532036/North-Korea-locks-up-disabled-in-subhuman-gulags-says-UN.html>; see also U.N. GAOR, 66th Sess., ¶ 1, U.N. Doc. A/C.3/66/L.54 (Oct. 28, 2011) (expressing deep concern regarding the persecution of persons with disabilities).

¹¹⁵ U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., *Democratic People’s Republic of Korea Human Rights Report 1* (2013).

effective access to health, education, and social services.¹¹⁶ In 2003, the UN Committee on Economic, Social and Cultural Rights first introduced the situation of children with disabilities, including their exclusion from the formal education system in North Korea.¹¹⁷ Reporting also indicates that that high levels of malnutrition indicated serious problems for both the physical growth and psychosocial development of young children with significant acute malnutrition or chronic malnourishment.¹¹⁸ Such treatment is widespread, systematic in nature, and directly connected to the government's policy of extreme oppression and control, and yet is under-examined, including by the UN Commission of Inquiry established to investigate possible crimes against humanity by the regime.¹¹⁹

Reports on the ongoing armed conflict in Syria likewise shed light on grave violations of international law against persons with disabilities that were left behind as families were forced to flee and disabled individuals in institutional facilities. Moreover, the survivors of armed conflict in both Syria and Iraq, many of

¹¹⁶ Convention on the Rights of the Child, U.N. GAOR, 18th Sess., ¶ 16, U.N. Doc. CRC/C/15/Add.88 (1998) (expressing concern, *inter alia*, regarding the rise on child mortality rate as a consequence of malnutrition especially of the most vulnerable children such as those living in institutions); Convention on the Rights of the Child, U.N. GAOR, 36th Sess., ¶¶ 6–21, U.N. Doc. CRC/C/15/Add.239 (2004) (expressing concern at the very poor living conditions of the disabled, their lack of integration in schools and society at large, the lack of recovery measures, and at prevailing discriminatory attitudes toward them in society).

¹¹⁷ Econ. and Soc. Council, U.N. GAOR, 31st Sess., ¶ 46, U.N. Doc. E/C.12/1/Add.95 (Dec. 12, 2003).

¹¹⁸ *See, e.g.*, Convention on the Rights of the Child, U.N. GAOR, 50th Sess., ¶ 58, U.N. Doc. CRC/C/PRK/CO/4 (Mar. 27, 2009) (stating that the committee is deeply concerned that children's right to life, survival and development continue to be severely violated within the state and that the committee is particularly concerned about stunting, wasting and deaths of children resulting from severe malnutrition).

¹¹⁹ *See* U.N. GAOR, 25th Sess., ¶¶ 74–79, U.N. Doc. A/HRC/25/63 (Feb. 7, 2014).

whom acquired disabilities as a result, are left without any recourse or access to much needed health and psycho-social services.¹²⁰

The implications for the foreign policy of the United States in respect of ensuring egregious cases of crimes against children with disabilities are clear—the United States along with other states must insist upon accountability at the international level for crimes against humanity, including those directed at children with disabilities. To that end, it must continue to deepen its coverage of abuses against children and adults with disabilities in its annual human rights reporting,¹²¹ in its trafficking reporting,¹²² and through its participation in UN mechanisms, including processes that establish mandates for UN Commissions of Inquiries into crimes against humanity and other grave human rights violations. A question that emerges within the context of American leadership in advancing human rights as part of its foreign policy, is whether this is ever likely to include ratification of the two instruments most directly applicable to protecting the human rights of children with disabilities: the CRC and the CRPD.

III. WHETHER US RATIFICATION OF THE CRC AND CRPD?

The placement of disability rights on the global human rights agenda through the CRPD is beginning to elevate some of the most serious human rights abuses impacting children and adults

¹²⁰ Amnesty Int'l, *Escape from Hell: Torture and Sexual Slavery in Islamic State Captivity in Iraq*, 13–14 (2014), http://www.amnestyusa.org/sites/default/files/escape_from_hell_-_torture_and_sexual_slavery_in_islamic_state_captivity_in_iraq_mde_14021_2014.pdf.

¹²¹ See *Human Rights Reports*, U.S. DEP'T OF ST.: DIPL. IN ACTION, <https://www.state.gov/j/drl/rls/hrrpt/>.

¹²² See U.S. Dep't of St., Bureau of Democracy, H.R. and Lab., *Trafficking in Persons Rep.* (2016).

with disabilities. The near universal ratification of the CRPD as well as the CRC, despite American disapproval, continues to confound international human rights advocates who hold up many American law and policy approaches to address abuses in other countries. The relationship of the United States to international law and its institutions is a fraught and complicated one that cannot be summed up neatly in a sound bite about American exceptionalism. On the matter of treaty ratification by the United States, in particular human rights treaties, there is a long history of cultural resistance that shows little sign of erosion.¹²³ The roots of this resistance to human rights treaties in particular can be traced back to the mid-20th century where even the weakly worded human rights language in the UN Charter evoked fears of upending statutory racism in the American South and other states.¹²⁴ Senator Bricker of Ohio, responding to those fears, proposed a failed amendment to the United States Constitution that engendered an understanding whereby human rights treaties would not be put forward for ratification, creating a log jam rarely broken to the present day.¹²⁵

Former President Obama pledged to support ratification of the CRPD during his first presidential campaign, albeit belatedly. He made good on his word, however, quickly signing the CRPD in July 2009.¹²⁶ It took far longer to prepare the ratification

¹²³ See also Janet E. Lord & Michael Ashley Stein, *Enabling Refugee and IDP Law and Policy: Implications of the U.N. Convention on the Rights of Persons with Disabilities*, 28 ARIZ. J. INT'L & COMP. L. 401, 413 (2011).

¹²⁴ *Id.* at 476.

¹²⁵ *Status of Ratification Interactive Dashboard*, U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMM'R, <http://indicators.ohchr.org/> (last visited Apr. 19, 2017) (containing the official UN reporting on ratification of core human rights conventions).

¹²⁶ *White House Press Release: Remarks by President Obama on Signing of UN Convention on the Rights of Persons with Disabilities Proclamation*, INST. FOR HUMAN CENTERED DESIGN (July 28, 2009), <http://www.humancentereddesign.org/news/white-house-press-release-remarks-president-obama-signing-un-convention-rights-persons-disabili>.

package and to garner some bi-partisan support that would warrant its placement before the United States Senate for its advice and consent—with the requisite and hefty sixty-seven required votes.¹²⁷ That said, the package was prepared in an inter-agency process and submitted to the Senate for its advice and consent. Apparent support that would have resulted in ratification, spearheaded by Republicans Bob Dole and Senator John McCain, among others, quickly unraveled, in many instances on the same bases upon which the CRC has been consistently reviled by opponents. The Heritage Foundation's response to the treaty was anticipated but represented a slightly more measured reaction than CRC and CEDAW — pointing to the usual concerns — many of which are indeed important to reflect upon before taking on international legal obligations.¹²⁸ Responses from treaty skeptics aligned with a network of parents of home-schooled children reflected the same general tone of CRC opposition.¹²⁹

A. Falsehood number 1: United States treaty ratification is a sovereignty-ceding exercise

A common falsehood leveled at human rights treaty participation in the United States is that ratification constitutes an unacceptable ceding of sovereignty, particularly for core human rights conventions that create, within their framework, a treaty committee to which States report on their progress in implementing treaty obligations. The notion that ratification of a

¹²⁷ U.S. CONST, art. II, § 2.

¹²⁸ Steven Groves, *The Shameful Selling of the Disabilities Treaty*, HERITAGE FOUND (Nov. 21, 2013), <http://www.heritage.org/research/commentary/2013/11/the-shameful-selling-of-the-disabilities-treaty>.

¹²⁹ See MICHAEL P. FARRIS, *The UN Convention on the Rights of Persons with Disabilities: A Danger to Homeschool Families*, HSLDA (May 29, 2012), <https://www.hslda.org/docs/news/2012/201205250.asp> (providing a characteristic reaction to the CRPD by those associated with the opposition).

human rights treaty cedes sovereignty over to a UN body sitting in Geneva and convening a few weeks a year is patently false, as the treaty text on the mandate of such bodies bears out with clarity.¹³⁰ Absent ratification of the CRPD's Optional Protocol, which opens the door to additional forms of scrutiny but similarly without legal effect, the mandate of the treaty body is to generate *recommendations*, that are, as the term suggest, *recommendatory* in nature.¹³¹ A state can take them into account in processes of reform or in new programming, but a state may likewise ignore them altogether.

The sovereignty of the United States is hardly put at risk in the face of optional guidance leveled every few years by a UN treaty body. There is no ceding of jurisdiction over to an international body that could result in a legally binding decision directing the United States to take action of any kind unlike, say, participation in the International Criminal Court or even compulsory arbitration under the Law of the Sea Convention,¹³² neither of which the United States has ratified.

Further claims to the effect that language in Article 6 of the U.S. Constitution according to which "Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land," the provisions of the CRC or CRPD would automatically supersede all federal and state laws is factually incorrect. First, the Supreme Court held in its 1957 decision in *Reid v. Covert* that no branch of the U.S. Government can have powers conferred upon it by treaty that have not been

¹³⁰ CRPD, *supra* note 1, at art. 36(1) ("Each report shall be considered by the Committee, which shall make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned.").

¹³¹ CRPD, *supra* 1, at art. 36(1).

¹³² *Convention on the Law of the Sea*, UN.ORG., http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf (last visited Apr. 19, 2017).

conferred by the U.S. Constitution.¹³³ Further, treaty practice by the United States makes all human rights treaties ratified by the United States “non-self-executing.” In other words, the provisions of the treaty cannot be binding without specific legislative action at federal and state levels. Accordingly, it is up to the elected legislature to decide whether, how and when to incorporate provisions of the CRC or CRPD into domestic policies and laws.

B. Falsehood number 2: CRC and CRPD ratifications would undermine parental rights

A chief critique of both the CRC and the CRPD is that the treaties are undermining of parent rights and authority. The nemesis of parenting, so the argument goes, is that according children the right to state their views and applying the principle of “best interests of the child” in decision-making somehow transgresses parental authority.¹³⁴ Both the CRC and the CRPD provide that the best interests of children must be the primary concern in making decisions that may affect them. UNICEF underscores that this means plainly that “[a]ll adults should do what is best for children” and that “[w]hen adults make decisions, they should think about how their decisions will affect children” especially in relation to budget, policy and law makers.¹³⁵ In other words, the views of children are to be given due account, consistent with their level of maturity and subject to parental or guardian judgment.

Further, far from pitting children's rights against the rights of their parents, human rights conventions such as the CRC and

¹³³ Reid v. Covert, 354 U.S. 1, 5–6 (1957).

¹³⁴ See generally FARRIS, *supra* note 129.

¹³⁵ *Fact Sheet: A Summary of the Rights under the Convention on the Rights of the Child*, UNICEF, https://www.unicef.org/crc/files/Rights_overview.pdf (last visited Apr. 19, 2017).

CRPD are drafted with the purpose of ensuring that governments recognize the rights and needs of both children and parents. Under both the CRC and CRPD, parental responsibility is protected from government interference and each treaty emphasizes the essential role parents play in the lives of their children. Each recognizes the family "as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children"¹³⁶ The CRC explicitly provides that "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love, and understanding"¹³⁷

The rights recognized in both conventions are firmly embedded in the U.S. Constitution, and federal and state law affecting the rights of American children and parents. An additional irony is the important role that the United States and its legal framework played in the drafting of the CRC.¹³⁸ Neither the CRC nor the CRPD confer on children the "right" to sue their parents. Rather, any legal action brought by children against their parents must be based on existing federal or state laws, not on provisions contained in the treaties.

C. Falsehood number 3: Treaties restricting parental rights to home-school their children

A separate, but related, concern leveled at participation in both the CRC and CRPD by the United States is the notion that parental rights are undermined on account of rights set forth in both treaties.¹³⁹ Opposition generally consists of two bases. First,

¹³⁶ CRC, *supra* note 2, at Preamble, ¶ 5; CRPD, *supra* note 1, at Preamble, § x.

¹³⁷ CRC, *supra* note 2, at Preamble, ¶ 6.

¹³⁸ See generally Cohen, *supra* note 13 (explaining the role of the United States in the drafting process).

¹³⁹ See, e.g., FARRIS, *supra* note 129.

as noted above, the principle of the best interests of the child is often put forward as some sort of barrier to parental decision regarding homeschooling of their disabled child. This is fallacious as set out in the discussion above and as underscored by successive interpretations of the principle not only by the CRC Committee, but likewise by domestic courts. There is no evidence that the principle has even been invoked to undermine parental rights to select the best schooling arrangement for children with disabilities. Second, opponents contend that language regarding respect for the views of the child, recognized in both the CRC and the CRPD, undermines parental authority. This misunderstands the concept of consultation and participation which does nothing to undercut parental decision-making in respect of a child's education. Finally, nothing in Article 24 of the CRC removes parental rights to select home schooling as an educational option for children with disabilities.¹⁴⁰ It protects, by contrast, children with disabilities from being excluded from the general education system on the basis of disability.

D. Falsehood number 4: Conceptualizing disability in socio-contextual terms represents a dangerous undoing of the social fabric

Understanding disability not as a narrow, biomedical problem or inherent deficit but instead as a largely socially constructed phenomenon that creates unnecessary barriers to engagement in society for disabled people allows for the identification and dismantling of barriers that inhibit access.¹⁴¹ The social framing of disability simply acknowledges that barriers in society contribute to the exclusion, isolation, marginalization of children

¹⁴⁰ CRC, *supra* note 2, at art. 24.

¹⁴¹ See generally Rosemary Kayess & Phillip French, *Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities*, 8 HUMAN RIGHTS. L. REV. 1 (2008) (explaining the social model of disability).

and adults with disabilities, not the mere fact of their impairment. Nothing in the treaty requires any change in the way disability is defined under American law. Indeed, the inclusion of language around defining disability in the CRPD was designed to take into account the varying definitions of disability reflected in national law, and the reality that disability may be defined in one respect for the purposes of defining benefits and other respect for the purposes of outlining non-discrimination. The language in the treaty provides signposts but does not prescribe a particular definition of disability. In any case, the language in the CRPD roughly corresponds to the definition under the Americans with Disabilities Act and the American definition is wholly compatible with the CRPD, leading to no issue.¹⁴²

E. Falsehood number 5: Ratification of human rights treaties by the United States does not matter if our domestic law is already strong

A further argument against ratifying human rights conventions by the United States posits that participation in treaties whose subject matter is already adequately addressed in domestic law and the state or federal levels is unnecessary and perhaps superfluous. This is a poor argument for non-participation, especially when the United States supports as part of its foreign policy democratic governance and human rights, which is clearly in the national interest. Participation in the global human rights project through participation in human rights treaties signals the commitment of the United States to international human rights which is part and parcel of our stated foreign policy. It is indeed incongruent to press for human rights treaty obeisance on the part of other states when we are unwilling to participate in those same international treaty obligations which are in any case, in large measure already part of our domestic law. Having a seat at the table of a UN treaty body is meaningful

¹⁴² *Americans with Disabilities Act* of 1990, 42 U.S.C. § 12102 (2008).

and hardly an abridgment of sovereignty given the recommendatory nature of their conclusions. This is borne out by the fact that the United States already reports to the CRC Committee on implementation of the Optional Protocols on Children in Armed Conflict and the Sale of Children,¹⁴³ a process that has proven to be helpful in highlighting and addressing human rights issues facing highly marginalized children.

Participation in the CRPD, the CRC and indeed other human rights conventions enables the United States to take part in a global conversation on important issues impacting the protection of children with disabilities, such as deinstitutionalization, refugee assistance, inclusive education, among other things. Insofar as the United States is not a party to the CRC, for instance, it is limited in the extent to which it can partner with UNICEF or other organizations in using the Convention as a specific tool for supporting children and families globally. Limiting or restricting the leadership role of the United States in promoting child rights by failing to join an otherwise universally ratified treaty does not help to advance US human rights foreign policy.

Ratification of the CRC would reinforce America's leadership to provide assistance to children with disabilities and their families, and strengthen our ability to partner with UNICEF and other organizations to help governments respond to the needs of children and families. As Cynthia Price Cohen, a primary drafter of the CRC noted with regard to participation in the CRC, the legitimacy of U.S. human rights foreign policy vis a vis other

¹⁴³ See *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, U.N. HUMAN RIGHTS: OFF. OF THE HIGH COMM'R, www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRRC.aspx (last visited Apr. 19, 2017); *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, UNICEF, https://www.unicef.org/crc/index_30204.html (last visited Apr. 19, 2017).

States is compromised by its non-ratification, especially insofar as the United States' routinely, by Congressional mandate, reports on the shortcomings of States Parties regarding child rights (and disability rights) in its annual survey of human rights abuses.¹⁴⁴ Finally, work on protection for the rights of children with disabilities in the United States, if not exactly transferable, does serve as a model that could be adapted in other settings, as countries come into alignment with child rights consistent with international standards.

CONCLUSION

The global human rights framework has, in large measure, expanded its protection to include children with disabilities through the adoption of the CRC and, more significantly, the CRPD. The placement of children with disabilities on the human rights agenda is starting to achieve positive returns in law and policy reform and in campaigns to end institutionalization, advance inclusive, quality education, and break down stigma and stereotyping that so often leads to isolation, exclusion and human rights violations against children with disabilities. Treaty obligations are prompting child-focused, disability inclusive advocacy practices on the part of non-governmental organizations engaged in human rights fact-finding and those working on inclusive development. Yet much more remains to be done to bring into operation the progressive standards for children and adults set out in the CRPD.¹⁴⁵ While prospects for ratification of the CRC and CRPD in the short term by the United States appear highly unlikely, American human rights foreign

¹⁴⁴ Cohen, *supra* note 13, at 195.

¹⁴⁵ See *Here's Why Disability Rights Should be at the Forefront of the Human Rights Movement*, AMNESTY INT'L, <http://blog.amnestyusa.org/identity-and-discrimination/heres-why-disability-rights-must-be-on-the-forefront-of-the-human-rights-movement/> (Dec. 3, 2016, 12:00 AM) (noting the continuing tepid response of mainstream human rights organizations to put disability rights on their advocacy agendas).

policy can advance the principles of American disability rights law and the spirit of both treaties. It can do so by providing adequate accommodations to children and adults with disabilities detained for any reason at our borders, fast-tracking vetting processes for immigrants seeking urgent medical or rehabilitation care for children with disabilities, participating fully in international campaigns to end institutionalization of children with disabilities, and ending the funding of orphanages and segregated homes for children with disabilities abroad. Further, the United States can encourage, through leadership in international criminal investigations into North Korea and other oppressive regimes, the inclusion of children and adults with disabilities in documentation and reporting of abuses.