

“THE SUGGESTIONS ON THE RIGHTS OF THE CHILD”:  
WHY THE UNITED NATIONS' CONVENTION ON THE  
RIGHTS OF THE CHILD IS A TWENTY-FIVE YEAR  
FAILURE

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INTRODUCTION

A law that goes unenforced may as well be a suggestion. In today's world, suggestions never seem to carry much weight.<sup>1</sup> Such is the case with the United Nations' Convention on the Rights of the Child (CRC or the “Convention”).<sup>2</sup> Entered into force in September 1990, and ratified by 193 countries, the CRC is the most widely ratified human rights treaty in the world.<sup>3</sup> Three countries have held out; to this day the CRC has not been ratified by the United States, South Sudan, or Somalia.<sup>4</sup> Almost 25 years old, it is difficult, and perhaps even dishonest, to say that the CRC has effected much change or improvement in terms of the status of children around the world.<sup>5</sup>

One of the principal reasons for this is the lack of enforcement of the CRC's provisions within the States Parties (or “signatory nations”) who

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<sup>1</sup> See Oona A. Hathaway, *Making Human Rights Treaties Work: Global Legal Information and Human Rights in the 21st Century*, 31 INT'L J. LEGAL INFO. 312, 312-13 (2003).

<sup>2</sup> Convention on the Rights of the Child, adopted Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

<sup>3</sup> LUISA BLANCHFIELD, CONG. RESEARCH SERV., R40484, THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD 1 (2013) [hereinafter CONG. RESEARCH SERV.].

<sup>4</sup> *Participating Countries*, CHILD RIGHTS CAMPAIGN, <http://www.childrights.org/what-is-the-crc/participating-countries> (last visited Nov. 30, 2014).

<sup>5</sup> Natasha Parassram Concepcion, *The Convention on the Rights of the Child After Ten Years: Success or Failure?* 7 HUM. RTS. BRIEF 2, 19 (2000) (“Although the CRC has highlighted children's rights and works with states to enforce these rights, reality suggests that states have not followed through on their commitments to the CRC.”); see also Lynne Marie Kohm, *A Brief Assessment of the 25-Year Effect of the Convention on the Rights of the Child*, 23 CARDOZO J. INT'L & COMP. L. 323, 345 (2015) [hereinafter *A Brief Assessment*].

have ratified it.<sup>6</sup> The CRC lacks the system of enforcement needed to make it more than just a twenty-five year-long suggestion; it needs to be enforced to allow for the adjudication of complaints of individual children. Currently, there is very little case law to be found which applies the Convention's standards to cases, giving it insufficient foundation and thus making it difficult to determine the ways in which it is to be implemented and enforced.<sup>7</sup> Instead, the implementation of the CRC is monitored by a committee of international experts whose "primary responsibility is to monitor reports submitted by States Parties on national implementation of [the] CRC."<sup>8</sup> Essentially, the committee gives criticism and makes recommendations, which the majority of member countries do not qualify as mandatory or necessary.<sup>9</sup> The advisory, non-adversarial nature of the CRC relies on diplomacy rather than legal sanction,<sup>10</sup> and for the time being, that is getting the children of this world nowhere.<sup>11</sup>

Countries that are party to the CRC agree to take "all appropriate legislative, administrative, and other measures" to ensure that all children in their jurisdiction have their rights set forth in the Convention.<sup>12</sup> "Such rights include life and development; name, nationality, and prenatal care; health and access to healthcare services; and education."<sup>13</sup> "They also include protection from abuse and neglect, as well as freedom of expression, religion, association, and peaceful assembly."<sup>14</sup> The "CRC calls for the protection of children from economic,

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<sup>6</sup> Concepcion, *supra* note 5, at 2. ("Despite the nearly universal ratification of the CRC, the situation of the world's youth casts doubt over actual domestic implementation and enforcement of the convention. In 1999, more than a decade after the CRC was adopted, the United Nations Children's Fund (UNICEF) indicated that the plight of children worldwide has not significantly improved. As of 1999, an estimated twelve million children under the age of five die every year, mostly of easily preventable causes; 130 million children in developing countries, a majority of whom are girls, are not in primary school; 160 million children are severely or moderately malnourished; approximately 1.4 billion children lack access to safe water; and 2.7 billion children lack access to adequate sanitation."); *see also A Brief Assessment*, *supra* note 5, at 344 ("Other inconsistencies are apparent in the lack of enforcement within the Convention itself, within the United Nations, and within the international community.").

<sup>7</sup> Stefanie Grant, *Functional Distinction or Bilingualism? Human Rights and Trade: The UN Human Rights System*, 5 THE WORLD TRADE FORUM, INT'L TRADE & HUMAN RIGHTS: FOUND. AND CONCEPTUAL ISSUES 137, 138 (Frederick M. Abbott et al. eds., 2006).

<sup>8</sup> CONG. RESEARCH SERV., *supra* note 3, at 3.

<sup>9</sup> *Id.* at 9.

<sup>10</sup> *Id.*

<sup>11</sup> *See id.* at 15–16 (describing the areas of ineffectiveness of the CRC as a whole).

<sup>12</sup> CRC, *supra* note 2, at 46.

<sup>13</sup> CONG. RESEARCH SERV., *supra* note 3, at 3; *see also* CRC, *supra* note 2 at 47, 52–53.

<sup>14</sup> CONG. RESEARCH SERV., *supra* note 3, at 3; *see also* CRC, *supra* note 2, at 48–50.

sexual, and other forms of exploitation; torture; and capital punishment for offenses committed before the age of [eighteen].”<sup>15</sup> “It also provides special protections for orphans, refugees, and the disabled.”<sup>16</sup> However, the prevalent lack of enforcement in certain countries is largely due to the flaws in the document itself,<sup>17</sup> as well as cultural mores and norms that cause these member States to interpret the CRC differently.<sup>18</sup> Often, member countries are dishonest with the CRC Committee about their degree of enforcement, and even more often, the countries lack the infrastructure required to implement and enforce the rules of the CRC.<sup>19</sup> Additionally, the UN’s jurisdiction has very little enforcement of law behind it, often making its regulations rather idealistic and ineffective.<sup>20</sup>

This Note will discuss in detail (1) the CRC’s background, key articles, and general problems, (2) the reasons behind the CRC’s lack of enforcement, (3) the types of atrocities that are happening to children around the world due to its lack of enforcement, (4) the reasons why the United States has, year after year and president after president, chosen not to ratify it, and (5) some ways in which the policies and implementation could be changed in order to make enforcement more effective.

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<sup>15</sup> CONG. RESEARCH SERV., *supra* note 3, at 3; *see also* CRC, *supra* note 2, at 50, 54–55.

<sup>16</sup> CONG. RESEARCH SERV., *supra* note 3, at 3; *see also* CRC, *supra* note 2, at 50–51.

<sup>17</sup> *See* discussion *infra* Section II.A.

<sup>18</sup> *See A Brief Assessment, supra* note 5, at 343 (“Furthermore, others question the Western, idealistic view of universal children’s rights that fails to take into account regional differences.”); *see also* Philip Alston, *The Best Interests Principle: Towards a Reconciliation of Culture and Human Rights*, in *THE BEST INTERESTS OF THE CHILD: RECONCILING CULTURE AND HUMAN RIGHTS* 1, 23 (Philip Alston ed, 1994) (discussing the cultural differences in the context of parental responsibility, parental rights, and child custody). *See generally* Sonia Harris-Short, *International Human Rights Law: Imperialist, Inept and Ineffective? Cultural Relativism and the U.N. Convention on the Rights of the Child*, 25 *HUM. RTS. Q.* 130 (2003) (discussing the use of the cultural relativism argument at the UN Committee on the Rights of the Child and how the “cultural difference” argument reflects the inherent limitations and fundamental weaknesses of an international legal system founded on a “society of States” where individual voices as well as voices of local governments are effectively silenced).

<sup>19</sup> *A Brief Assessment, supra* note 5, at 345 (“[B]ecause enforcement mechanisms are almost entirely internal, other problems such as honesty in enforcement and lack of infrastructure for enforcement in States Parties can be troubling, as evidenced by the fact that many of the trafficking issues come from groups that are not actually entities that could ratify the CRC, but exist nonetheless within States Parties.”); *see also* Heather L. Carmody, *The Child Soldiers Prevention Act: How the Act’s Inadequacy Leaves the World’s Children Vulnerable*, 43 *CAL. W. INT’L L. J.* 233, 245–46 (2012) (“State Parties recently emerging from internal conflict may not have the infrastructure and organizations necessary to address the long-term needs of its former child soldiers.”).

<sup>20</sup> *See A Brief Assessment, supra* note 5, at 345–46.

## I. CRC BACKGROUND AND OVERVIEW

### A. *The Origins of the CRC*

The United Nations 1989 Convention on the Rights of the Child was not the first attempt by an international organization to improve the lives of the world's children.<sup>21</sup> In 1924, "[t]he League of Nations . . . adopted the Geneva Declaration on the Rights of the Child,"<sup>22</sup> "which assert[ed] that 'mankind owes to the child the best it has to give.'"<sup>23</sup> Later in 1959, the United Nations adopted the Declaration on the Rights of the Child.<sup>24</sup> These declarations called for States Parties to recognize certain principles of children's rights and take appropriate legislative measures to enforce them.<sup>25</sup> However, the provisions of these Declarations were not legally binding upon the States Parties that adopted them and they were very general in nature,<sup>26</sup> calling for "the protection and [individual] development of children," and aiming for the improvement of "children's health, nutrition, safety, and education."<sup>27</sup>

In the late 1970s, some states (led primarily by the government of Poland) began to call for a new set of guidelines for children's rights that would bind states under international law.<sup>28</sup> Thus, in 1978 during the UN Commission on Human Rights' (UNCHR) 34th session, members discussed concerns regarding children's sufferance around the globe due to a multitude of issues and agreed to enhance international instruments for protecting children's rights, declaring the year 1979 to be the International Year of the Child, and "establish[ing] a working group to draft a convention on children's rights."<sup>29</sup>

The working group based the new convention on principles held in the 1924 and 1959 Declarations and welcomed advice and cooperation from UN member states, specialized UN agencies, and non-governmental organizations in the drafting of the new document.<sup>30</sup> In December 1988, the UNCHR working group finalized a draft of the Convention on the

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<sup>21</sup> Bruce C. Hafen & Jonathan O. Hafen, *Abandoning Children to Their Autonomy: The United Nations Convention on the Rights of the Child*, 37 HARV. INT'L L.J. 449, 450 (1996).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* (quoting U.N. Dep't of Pub. Info., *Convention on the Rights of the Child: World Campaign for Human Rights* at 1, U.N. DOC. DPI/1101, U.N. Sales No. E.91.I.51 (1991)).

<sup>24</sup> *Id.*

<sup>25</sup> Concepcion, *supra* note 5, at 2.

<sup>26</sup> *Id.*

<sup>27</sup> Hafen & Hafen, *supra* note 21, at 450.

<sup>28</sup> Concepcion, *supra* note 5, at 2.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

Rights of the Child and submitted it to the UN General Assembly for approval.<sup>31</sup> On November 20, 1989, the UN General Assembly adopted the CRC and opened it for ratification on January 26, 1990.<sup>32</sup> The CRC officially entered into force on September 2, 1990, when twenty member states (the minimum number required for legal entry into force) ratified it; later gaining the coveted title of most widely ratified multinational treaty in existence after being ratified by 191 nations.<sup>33</sup> Today, signatory nations include Afghanistan, Canada, China, India, Iran, Israel, New Zealand, Saudi Arabia, Uganda, and the United Kingdom.<sup>34</sup>

However, in what the UN admittedly terms charting “new territory,” the 1989 Convention moves beyond the “protection rights” originally set forth in the 1924 and 1959 Declarations, to “choice rights” for children,<sup>35</sup> in that it “promotes a ‘new concept of separate rights for children with the Government accepting [the] responsibility of protecting the child from the power of parents.’”<sup>36</sup> Essentially, the Convention calls for giving children rights that are identical to those in which adults are allowed.<sup>37</sup> Thus, the Convention on the Rights of the Child takes a significant leap beyond the standards set forth in the first two Declarations by “adopting and promoting an ‘autonomous view’ of children’s rights that is ‘more based on choice than needs of children.’”<sup>38</sup> The CRC includes civil rights provisions which provide children with a “sphere of autonomy and freedom from control,”<sup>39</sup> “reject[ing] the integrative character of the 1959 Declaration, which had emphasized the ‘integration of persons into society.’”<sup>40</sup>

For reasons such as these, the United States, twenty-five years later, has perpetually chosen not to ratify the CRC.<sup>41</sup> However, the U.S. has in fact ratified the CRC’s Optional Protocol on Children in Armed Conflict and the Optional Protocol on the Sale of Children, which were considered less controversial than the CRC itself because U.S. laws seemed to broadly

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> CRC, *supra* note 2, at 1–3.

<sup>35</sup> Hafen & Hafen, *supra* note 21, at 450.

<sup>36</sup> *Id.* (quoting UNITED NATIONS 1994/95 PUBLICATIONS CATALOGUE at 64).

<sup>37</sup> *Id.* at 451.

<sup>38</sup> *Id.* (quoting Robert E. Shepherd, *Civil Rights of the Child*, in CHILDREN’S RIGHTS IN AMERICA: U.N. CONVENTION ON THE RIGHTS OF THE CHILD COMPARED WITH UNITED STATES LAW 135, 135 (Cynthia P. Cohen & Howard A. Davidson eds., 1990)).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* (quoting Lee Teitelbaum, *Forward: The Meanings of Rights of Children*, 10 N.M. L. REV. 235, 238 (1980)).

<sup>41</sup> See discussion *infra* Section IV.

meet the standards set forth in the Protocols.<sup>42</sup>

### B. *The Contents of the CRC*

The CRC consists of a preamble and 54 articles, which are divided into three parts.<sup>43</sup> “Part one (articles 1 through 41) contains the substantive provisions of the convention dealing with the general obligations of states parties and the specific rights granted to children.”<sup>44</sup> Part two (articles 42 through 45) contains provisions dealing with the Convention’s international implementation, such as requirements upon States Parties to present periodic reports on their progress.<sup>45</sup> Part three (articles 46 through 54) lays out the ratification, accession, reservation, and amendment processes.<sup>46</sup> Specifically and fundamentally, Article 1 defines the “child” to “mean every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.”<sup>47</sup> “Articles 2, 3, 6, and 12 enshrine the four main principles of the Convention.”<sup>48</sup>

Article 2, the Convention’s first key principle, deals with the concept of non-discrimination, asserting that all children are “entitled to equal rights and opportunities,”<sup>49</sup> stating in part that States Parties must respect and ensure the rights set forth in the Convention to each child within their country without any discrimination, “irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”<sup>50</sup> States Parties are instructed in this article to take “appropriate measures” to ensure these rights.<sup>51</sup>

Article 3, perhaps the most notoriously problematic aspect of the Convention, lays out the “best interests of the child” principle, which states that “[i]n all actions concerning children . . . the best interests of

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<sup>42</sup> CONG. RESEARCH SERV., *supra* note 3, at 4, n. 17 (“The Clinton Administration signed the Optional Protocols on July 5, 2000, and transmitted both treaties to the Senate on July 25, 2000 (Treaty Doc. 106-37). The Bush Administration strongly supported the ratification of the Optional Protocols. The Senate provided its advice and consent to ratification of both agreements on June 18, 2002. The United States became party to the treaties on December 24, 2002, and they entered into force for the United States on January 23, 2003.”).

<sup>43</sup> Concepcion, *supra* note 5, at 2; *see generally* CRC, *supra* note 2.

<sup>44</sup> Concepcion, *supra* note 5, at 2.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> CRC, *supra* note 2, at 46.

<sup>48</sup> Concepcion, *supra* note 5, at 2.

<sup>49</sup> *Id.*

<sup>50</sup> CRC, *supra* note 2, at 46.

<sup>51</sup> *Id.*

the child shall be a primary consideration.”<sup>52</sup> This results in the compulsion of “social welfare institutions, courts of law, administrative bodies, and legislative bodies . . . to act in the best interests of the child when taking action involving a child[.]” including “instances when the rights of the child conflict with prerogatives of the parents and guardians and/or with those of the state.”<sup>53</sup> Essentially, the child’s best interests prevail.

Article 6, the third and likely the most widely accepted key principle of the Convention, delineates a child’s right to life, survival, and development, holding that “every child has the inherent right to life” and “States Parties shall ensure to the maximum extent possible the survival and development of the child.”<sup>54</sup> “The right to development [and thus, life] means not only physical health and development, but also [entails] mental, emotional, social, cognitive, and cultural development[.]” entitling children “to certain programs, conditions, and opportunities related to the qualitative aspect of survival.”<sup>55</sup>

Article 12, the last key principle whose implementation has often been difficult or nonexistent, establishes “the importance of the child’s participation and opinions in matters concerning [him or] herself,” in that it ensures the child’s participation in the determination of what is in his or her best interest.<sup>56</sup> This article specifically declares, “States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”<sup>57</sup> This includes granting to the child the opportunity to be heard “in any judicial [or] administrative proceedings affecting” him or her,<sup>58</sup> and to have their views taken seriously.<sup>59</sup>

Additional prevalent articles include Article 5, Article 9, Article 11,

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<sup>52</sup> *Id.*; see also Marisa Leto, *Whose Best Interest? International Child Abduction Under the Hague Convention*, 3 CHI. J. OF INT’L L. 247, 250 (2002); Concepcion, *supra* note 5, at 2.

<sup>53</sup> Concepcion, *supra* note 5, at 2.

<sup>54</sup> CRC, *supra* note 2, at 47; cf. S. Radhakrishnan, *Development of Human Rights in an Indian Context*, 36 INT’L J. LEGAL INFO. 303, 306 (2008) (discussing that rights to life are universally recognized).

<sup>55</sup> Concepcion, *supra* note 5, at 19.

<sup>56</sup> Laura Lundy, *‘Voice’ is not Enough: Conceptualizing Article 12 of the United Nations Convention on the Rights of the Child*, 33 BRIT. EDUC. RES. J. 927, 929–931 (2007); Concepcion, *supra* note 5, at 19.

<sup>57</sup> CRC, *supra* note 2, at 48.

<sup>58</sup> *Id.*

<sup>59</sup> UNICEF, *A Summary of the United Nations Convention on the Rights of the Child*, [http://childrenandyouthprogramme.info/pdfs/pdfs\\_uncrc/uncrc\\_summary\\_version.pdf](http://childrenandyouthprogramme.info/pdfs/pdfs_uncrc/uncrc_summary_version.pdf) (last visited Nov. 30, 2014) [hereinafter *A Summary*].

Article 19, Article 21, Article 27, Article 32, Article 34, Article 35, Article 36, and Article 37.<sup>60</sup> Article 5 affirms the duties of parents (but is then cut down somewhat in Article 18, which adds that while parents have the primary responsibility for the child's rearing and development, the best interests of the child must be the parents' main concern).<sup>61</sup> Article 9 provides that children may be separated from parents when it is necessary for the best interests of the child.<sup>62</sup> Article 11 deals with kidnapping and trafficking of children.<sup>63</sup> Article 19 guarantees children protection from all forms of violence, abuse, neglect, and mistreatment by parents or others.<sup>64</sup> Article 21 sets out adoption protocol.<sup>65</sup> Article 27 guarantees children an adequate standard of living which meets their physical, social, and mental needs.<sup>66</sup> Article 32 ensures governmental protection of children from child labor.<sup>67</sup> Article 34 ensures governmental protection of children from sexual exploitation.<sup>68</sup> Article 35 ensures governmental protection of children from abduction or sale.<sup>69</sup> Article 36 protects children from all other forms of harm or exploitation.<sup>70</sup> Lastly, Article 37 forbids the death penalty, life imprisonment, and/or torture/cruel and unusual punishment for children.<sup>71</sup>

The CRC's model of child autonomy is most clearly laid out in the "civil rights provisions," (Articles 13 through 16) which guarantee children: the right to freedom of expression (Article 13); freedom of thought, belief, and religion (Article 14); freedom of association (Article 15); and the right to privacy (Article 16).<sup>72</sup> Each of these Articles will be discussed further in the coming sections of this Note.

### C. General Problems

Not only are there are a number of fundamental flaws within the

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> See Richard G. Wilkins et al., *United States and its Participation in the Convention on the Rights of the Child: Why the United States Should Not Ratify the Convention on the Rights of the Child*, 22 ST. LOUIS. U. PUB. L. REV. 411, 418 (2003); CRC, *supra* note 2, at 48–49; see also *A Summary*, *supra* note 59.



document and structure of the Convention itself, but there are also issues that still exist in the world today despite the Convention, which are highly indicative of its poor implementation and enforcement.

The inaptly-named “best interests of the child” legal standard, in the form it takes within the Convention, is ineffective and contradicted within other sections of the document because it has been twisted into a “rights framework” for children.<sup>73</sup> The framework treats children as capacitated individuals when, in fact, they are often incapable of behaving like adults.<sup>74</sup> It serves to give children more rights than are necessary, and, in actuality, it affects the end result of the CRC.<sup>75</sup>

Additionally, many of the countries that commit the worst atrocities against children are also States Parties who claim to be committed to implementing and enforcing the provisions of the CRC.<sup>76</sup> Problems still in existence in legions are child sex trafficking, child marriage, child labor, female genital mutilation/cutting, and child soldiering.<sup>77</sup>

In many ways, conditions for children overall have worsened in the last twenty-five years since the CRC’s ratification.<sup>78</sup> Whereas the CRC has brought about a serious change in ideology toward children and the rights and protections they deserve, it has done little to veritably improve conditions for children around the globe.<sup>79</sup>

## II. REASONS BEHIND THE CRC’S LACK OF ENFORCEMENT IN SIGNATORY NATIONS

While the Convention on the Rights of the Child is certainly well-intentioned, its overall success lies in its ability “to make children visible” and bring about “an awareness of children’s needs, the development of

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<sup>73</sup> Lynne Marie Kohm, *Suffer the Little Children: How the United Nations Convention on the Rights of the Child Has Not Supported Children*, 22 N.Y. INT’L L. REV. 57, 60–61, 91–92 (2009) [hereinafter *Suffer the Little Children*]; see Lynne Marie Kohm, *Tracing the Foundations of the Best Interests of the Child in American Jurisprudence*, 10 J. L. FAM. STUD. 337 (2008) [hereinafter *Tracing the Foundations*] (discussing the “best interest of the child” standard in the context of American law).

<sup>74</sup> *Suffer the Little Children*, *supra* note 73, at 60–61; David B. Thronson, *Kids Will Be Kids – Reconsidering Conceptions of Children’s Rights Underlying Immigration Law*, 79 OHIO ST. L.J. 979, 987 (2002).

<sup>75</sup> See *id.* at 61.

<sup>76</sup> See *A Brief Assessment*, *supra* note 5, at 347; see also discussion *infra* Section II.

<sup>77</sup> See *A Brief Assessment*, *supra* note 5, at 327.

<sup>78</sup> See *id.* at 326. (“What evidence that does exist regarding children in State Party nations makes apparent that the CRC has essentially not achieved the desired objective set out 25 years ago – to improve the lives of children around the world. Rather, child victims are increasing.”). See generally UNICEF, *Child Welfare Statistics*, <http://www.unicef.org/rightsite/sowc/statistics.php> (last visited Oct. 6, 2015) (displaying various charts related to the well-being of children throughout the world).

<sup>79</sup> See *A Brief Assessment*, *supra* note 5, at 326.

international child rights law, and child participation in justice.”<sup>80</sup> However, the CRC seems to begin to fall apart at the point of implementation, and then goes completely awry at the point of enforcement.<sup>81</sup> Because the CRC is a multinational treaty, it carries with it the implementation and enforcement principles of international law, which dictate that “every treaty in force is binding upon the parties to it and must be performed by them in good faith.”<sup>82</sup> As a result, there are serious challenges when it comes to assuring diligent implementation and enforcement of any international treaty, and the challenges are seen very clearly in the CRC.<sup>83</sup> While implementation and enforcement are tricky areas in any type of international law,<sup>84</sup> when it comes to the CRC, there are rather discernible causes for its failure and even more evident effects, which unfortunately only worsen the circumstances for many children around the world.

A. *A Rights Framework is Unsuitable for Children*

Young children, and even some older children in developing countries, have no concept of what rights are.<sup>85</sup> Further, in some signatory nations, neither do most adults.<sup>86</sup> If rights are granted to a child who does not know how to use them, what good are they? If children can hardly be responsible for themselves, they cannot be responsible for their rights either.<sup>87</sup>

It is unwise “to embrace a document that moves toward giving children unprecedented autonomy rights.”<sup>88</sup> Prior to the CRC, no legal system anywhere in the world served to give autonomy rights to children and actually, most legal systems *limited* children’s autonomy “in the short run” so that the development of autonomy could happen on its own in the natural course of the child’s maturing process “in the long run.”<sup>89</sup> This approach encouraged development of the personal competence needed in order to be a functional member of society.<sup>90</sup> As scholars Bruce Hafen and Jonathan Hafen noted, “To ‘short-circuit this process by legally granting –

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<sup>80</sup> *See id.* at 347.

<sup>81</sup> *Id.* at 342–44.

<sup>82</sup> *See id.* at 347.

<sup>83</sup> *Id.* at 347–48.

<sup>84</sup> *See id.* at 348.

<sup>85</sup> *See Wilkins et al., supra* note 72, at 412, 417.

<sup>86</sup> *Cf. id.*, at 418 n.36 (noting that it is possible that many members within the international community simply do not understand the conceptual novelty of the CRC).

<sup>87</sup> *See id.* at 417.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* (quoting Hafen & Hafen *supra* note 21, at 491).

<sup>90</sup> *Id.*

rather than actually teaching – autonomous capacity to children ignores the realities of education and child development to the point of abandoning children to a mere illusion of real autonomy.”<sup>91</sup> In essence, children are not and cannot be autonomous.<sup>92</sup> They are “by definition, ‘immature’ – socially, mentally, emotionally, and physically,” and thus law deprives children of certain things in order to protect them from “the consequences of their immaturity.”<sup>93</sup> Despite the CRC’s good intentions to protect children from those who mistreat or exploit them, the “civil rights” provisions (Articles 13–16) move outside of protecting children and “toward granting children greater ability to make decisions traditionally reserved for adults,”<sup>94</sup> which in turn could possibly serve to put them in greater danger.<sup>95</sup>

In sum, a rights framework that cannot be properly put into practice can neither be properly enforced if those who are granted the rights are not attempting to use them. It is not that children are being deprived of their CRC-given rights to choose what is best for themselves, it is that they are not aware they have these rights in the first place, nor do they have the capacity to decide what is best for themselves.<sup>96</sup>

*B. The Non-Adversarial Nature of the Committee on the Rights of the Child*

Article 43 of the CRC establishes the Committee on the Rights of the Child,<sup>97</sup> which essentially serve as the non-adversarial “enforcers” of the Convention.<sup>98</sup> It is composed of eighteen independent experts who serve four-year terms, and are elected by States Parties.<sup>99</sup> The Committee monitors the reports “submitted by States Parties on the national implementation of the CRC” and then meets with States Parties and dialogues with them about progress, challenges, and future goals in CRC implementation.<sup>100</sup> Committee members make observations and suggestions, and may request additional information from States Parties

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<sup>91</sup> *Id.* (quoting Hafén & Hafén *supra* note 21, at 491).

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* (quoting CRC, *supra* note 2, at 45).

<sup>94</sup> *Id.* at 418.

<sup>95</sup> *Cf. id.* at 417 (noting the potentially dangerous situations children are kept from as consequence of their immaturity).

<sup>96</sup> *See* Hafén & Hafén, *supra* note 21, at 461 (discussing the difference between the rights of protection and the choice rights granted to children in the CRC).

<sup>97</sup> CRC, *supra* note 2, at 58–59.

<sup>98</sup> Concepcion, *supra* note 5, at 19.

<sup>99</sup> CONG. RESEARCH SERV., *supra* note 3, at 3.

<sup>100</sup> *Id.* at 3–4.

if necessary.<sup>101</sup>

Because the CRC Committee is only advisory and non-disciplinary, they are essentially ineffective.<sup>102</sup> It “relies primarily on States Parties to comply with CRC obligations and has no established rules for treaty non-compliance.”<sup>103</sup> Further, “enforcement mechanisms under [the] CRC are weaker than [most] other human rights treaties” because they rely on diplomacy rather than legal sanction.<sup>104</sup>

### C. *Flaws and Contradictions Within the Document*

Who is a child? Article 1 of the CRC states that a child is anyone under the age of eighteen years, *unless under the national law applicable to the child, adulthood is reached earlier*.<sup>105</sup> While it is understandable that some countries’ cultural norms are such that an individual is considered an adult at an earlier age than eighteen, including that provision within Article 1 serves to lessen the importance of the CRC definition of a child and acknowledges that “nations may recognize children as adults.”<sup>106</sup> Then, the international understanding of childhood becomes “more blurred” when compared to Article 38, which states that “children under the age of fifteen years should not be recruited or take direct part in [armed] hostilities.”<sup>107</sup> For signatory nations, this is nothing more than confusing; that a child can fight in a war and perhaps be killed, but he cannot work more than forty-three hours per week?<sup>108</sup> From the first article of the Convention, which allows for any national law to “subsume it,” the actual age of childhood “is a matter of some dispute,” leaving signatory nations wondering, who is a child?<sup>109</sup>

Additionally, the preamble of the Convention when compared to section 3 of Article 24 leads to more confusion and/or room for personal interpretation. The preamble refers to the “*importance* of traditions and cultural values as important in the protection and development of

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<sup>101</sup> *Id.* at 4.

<sup>102</sup> *Id.* at 9.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> CRC, *supra* note 2, at 46.

<sup>106</sup> See Mark Gee, *Why is the International Justice System Ineffective at Protecting the Rights of Child Soldiers?* INTERNET J. CRIMINOLOGY 3 (2010), [http://www.internetjournalofcriminology.com/Gee\\_Child\\_Soldiers\\_and\\_the\\_International\\_Justice\\_System\\_Oct\\_2010.pdf](http://www.internetjournalofcriminology.com/Gee_Child_Soldiers_and_the_International_Justice_System_Oct_2010.pdf).

<sup>107</sup> *Id.* at 3–4.

<sup>108</sup> See UNICEF, *An Estimated 150 Million Children Worldwide Are Engaged in Child Labor*, <http://data.unicef.org/child-protection/child-labour.html> (last updated June, 2015) [hereinafter *150 Million Children*].

<sup>109</sup> See Gee, *supra* note 106, at 9.

children” in a positive light, yet Article 24 “refers to the *abolition* of traditional practices that are harmful to children” in a negative light.<sup>110</sup> Because there is no actual definition of “traditional practices” available,<sup>111</sup> some individuals in signatory nations (such as those who are practitioners of harmful treatment of children, for example) could certainly be led to think that the preamble’s reference of “tradition” in a positive sense would mean child marriage or female genital mutilation, something that is a part of their everyday lives and culture.<sup>112</sup> However, when a person with a “Western perspective” reads Article 24, they perceive the “traditions” referred to in the negative sense to be something like child marriage or female genital mutilation.<sup>113</sup> Better definitions and clearer language are needed for the CRC to be construed and implemented in the same ways for all States Parties who have ratified it.

Lastly, the CRC leaves no room or consideration for certain signatory nations who simply lack the infrastructure to implement each of the CRC’s provisions.<sup>114</sup> Put simply, the CRC is not effective or enforced in certain nations because, unfortunately, one size does not fit all.

### III. EFFECTS OF NON-ENFORCEMENT: ATROCITIES CHILDREN STILL FACE AFTER 25 YEARS OF THE CRC

Because “[t]he CRC leaves implementation and enforcement to each individual state,”<sup>115</sup> a large number of the provisions of the CRC are simply not enforced in many signatory nations, and indifference is widespread.<sup>116</sup> This indifference not only encourages the continuance of maltreatment of children, but it also leads to a scarcity of child complaints which could be adjudicated upon.<sup>117</sup> This, in turn, leaves countries with little to no idea of how the CRC should be implemented or enforced, because there is so little case law on the subject,<sup>118</sup> which would, if present,

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<sup>110</sup> *Id.* at 4 (emphasis added).

<sup>111</sup> *Id.*

<sup>112</sup> See *Suffer the Little Children*, *supra* note 73, at 74.

<sup>113</sup> See Gee, *supra* note 106, at 4.

<sup>114</sup> *Cf. id.* at 5 (discussing, in the context of child soldiering, how nations with fewer resources are not obligated to honor their commitments at the local level).

<sup>115</sup> *Suffer the Little Children*, *supra* note 73, at 75.

<sup>116</sup> See *id.* at 75–76.

<sup>117</sup> *Id.*; see 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, 181 (1998); cf. Nel Hedayat, *What Is It Like to Be a Child Bride?*, BBC NEWS MAGAZINE (Oct. 4, 2011), <http://www.bbc.com/news/magazine-15082550> (noting how reports, in the context of child marriage, are rare).

<sup>118</sup> See Stefanie Grant, *International Trade and Human Rights: Foundations and Conceptual Issues*, in 5 WORLD TRADE FORUM 138, 138 (Frederick M. Abbott et al. eds., 5th ed. 2006).

provide a source of advice and general direction for implementation.

While significant progress has been made in terms of mortality rates<sup>119</sup> and education<sup>120</sup> among children in signatory nations, there are many other aspects of children's health and welfare that have not improved or have grown worse since the CRC's ratification twenty-five years ago.<sup>121</sup> While the progress in mortality rates and education cannot be solely attributed to the CRC, it is perhaps possible that the increase in reports of harm against children has been in part due to the CRC's advertising aspect, in that the mere existence of the CRC has served to bring about awareness of child welfare and the need for countries to concern themselves with it.<sup>122</sup> While awareness of the particular issues facing children has been advanced by the CRC due to specific provisions addressing and/or implying them, few countries have fully incorporated the CRC's requirements into their own domestic law,<sup>123</sup> and thus these problems continue to plague children around the world.<sup>124</sup> While many issues still exist, such as child hunger, disease, and poverty,<sup>125</sup> this section will address six of the more shocking issues that continue to affect today's children in large numbers: child sex trafficking and exploitation, child marriage, child labor, female genital mutilation, and child soldiering.

#### A. *Child Sex Trafficking/Exploitation*

*“When I had sex with him, I felt empty inside. I hurt and I felt very weak. It was very difficult. I thought about why I was doing this and why my mom did this to me.”*

— Jorani, human sex trafficking survivor whose mother sold her into prostitution in Cambodia, 2013.<sup>126</sup>

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<sup>119</sup> UNICEF, *Levels & Trends in Child Mortality*, at 2 (2013), [http://www.who.int/maternal\\_child\\_adolescent/documents/levels\\_trends\\_child\\_mortality\\_2013.pdf?ua=1](http://www.who.int/maternal_child_adolescent/documents/levels_trends_child_mortality_2013.pdf?ua=1).

<sup>120</sup> See UNESCO INSTITUTE FOR STATISTICS (UIS), *Global Education Digest 2011: Comparing Education Statistics Across the World*, at 7, 9 (2011) (discussing increased rates of primary education).

<sup>121</sup> See *A Brief Assessment*, *supra* note 5, at 326.

<sup>122</sup> See *id.* at 341–42.

<sup>123</sup> See *id.*

<sup>124</sup> *A Brief Assessment*, *supra* note 5, at 326–28, 341–43; see, e.g., UNICEF, *The UN Convention on the Rights of the Child: A Study of Legal Implementation in 12 Countries*, at 2, 8, 34–35 (Nov. 2012), [http://www.unicef.org.uk/Documents/Publications/UNICEFUK\\_2012CRCimplementationreport%20FINAL%20PDF%20version.pdf](http://www.unicef.org.uk/Documents/Publications/UNICEFUK_2012CRCimplementationreport%20FINAL%20PDF%20version.pdf) (noting the problems still experienced by vulnerable groups of children).

<sup>125</sup> See *Feed Minds, Change Lives: School Feeding, the Millennium Development Goals and Girl's Empowerment*, WORLD FOOD PROGRAMME, 2015, at 2, 8, <http://www.un.org/en/ecosoc/innovfair2011/docs/wfp.pdf>.

<sup>126</sup> U.S. Dep't of State, *Trafficking in Persons Rep.*, 29 (2014).

Child trafficking is the “recruitment, transportation, transfer, harbouring or receipt of [children] for the purpose of exploitation.”<sup>127</sup> Trafficking of children is explicitly prohibited by the CRC, as it violates “their rights, their well-being and denies them the opportunity to reach their full potential.”<sup>128</sup> Today, human trafficking is referred to as “a form of modern slavery.”<sup>129</sup> In 2002, the International Labor Organization estimated that approximately 1.2 million children are trafficked each year around the world.<sup>130</sup> However, an estimated 2 million children, the majority of which are girls, are “sexually exploited in the multi-billion-dollar commercial sex industry.”<sup>131</sup> The former figure remains the reference today, yet little is known about the overall magnitude of child trafficking,<sup>132</sup> as so much of it is disguised and done covertly.<sup>133</sup> Article 34 of the Convention prohibits “all forms of sexual exploitation and sexual abuse” of children, specifically stating:

For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials.<sup>134</sup>

Despite the prohibitions of Article 34, sex trafficking of children still exists in large numbers today. Countless organizations raise awareness and funds in order to combat this injustice, yet it is still in vast existence

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<sup>127</sup> *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, Annex II, art. 3(a), Dec. 12, 2000, G.A. Res. 55/105, U.N. Doc. A/55/383 (2000).

<sup>128</sup> UNICEF, *Child Protection from Violence, Exploitation and Abuse*, [http://www.unicef.org/protection/57929\\_58005.html](http://www.unicef.org/protection/57929_58005.html) (last updated Mar. 22, 2011) [hereinafter *Child Protection*].

<sup>129</sup> *Sex Trafficking*, INT’L JUSTICE MISSION, <https://www.ijm.org/casework/sex-trafficking> (last visited Sept. 11, 2015).

<sup>130</sup> See Int’l Labour Office [ILO], *Every Child Counts, New Global Estimates on Child Labour*, at 25 (Apr. 2002).

<sup>131</sup> UNICEF, *The State of the World’s Children 2005: Childhood Under Threat*, at 1–10, 103–145 (2004), [http://www.unicef.org/publications/files/SOWC\\_2005\\_\(English\).pdf](http://www.unicef.org/publications/files/SOWC_2005_(English).pdf).

<sup>132</sup> *Child Protection*, *supra* note 128.

<sup>133</sup> Natalie M. McClain & Stacy E. Garrity, *Sex Trafficking and the Exploitation of Adolescents*, 40 J. OBSTETRIC, GYNECOLOGIC, & NEONATAL NURSING 243, 243, 251 (2011).

<sup>134</sup> CRC, *supra* note 2, at 55.

due to the huge market value of illicit human trafficking.<sup>135</sup>

Forced prostitution and sexual exploitation among children thrive in countries where law enforcement does not or cannot protect vulnerable children.<sup>136</sup> The vast majority of sex trafficking victims come from poverty.<sup>137</sup> Often times, impoverished girls are “especially susceptible to traffickers’ schemes of deception because the desperation of their economic situation makes them . . . more likely to accept a perpetrator’s fraudulent job offer or insincere marriage proposal.”<sup>138</sup> Once trafficked, victims find themselves facing horrors of sexual violence, including serial rape; physical assault and torture from owners, pimps, and customers; forcible injection with narcotics; contraction of HIV/AIDS and other sexually transmitted diseases; child pregnancy; death; etc.<sup>139</sup>

While it is true that sex trafficking is a “worldwide phenomenon,” sex slavery also exists in large part because of the lack of effective public justice systems in many countries.<sup>140</sup> If perpetrators know they are unlikely to face any consequences for their actions of sexual violence, they will not be deterred from doing so.<sup>141</sup> Sadly, many of the abuses in countries such as these are at the hands of local police who are contributing to the problem rather than acting as a solution.<sup>142</sup> In countries such as Cambodia (a CRC signatory nation), for example, police are often complicit in the sexual abuse and trafficking of women and children.<sup>143</sup> In fact, in 2010, reports indicated that Cambodian police randomly swept brothels and rounded up sex workers, keeping them in jail, and sexually and physically abusing them until their pimps paid

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<sup>135</sup> See *Anti-trafficking Organizations Directory*, FREEDOM4INNOCENCE, <http://freedom4innocence.org/anti-trafficking-organizations-directory/> (last visited Oct. 8, 2015) (listing various organizations that fight human trafficking); *State of the World’s Children*, *supra* note 131 (noting in the back cover the vast number of children who are sexually exploited); *Sex Trafficking*, *supra* note 129 (“Sex trafficking drives significant profits for perpetrators – a subset of the \$150 billion market value of illicit human trafficking.”); see also *UNODC Launches Global Initiative to Fight Human Trafficking*, UNDOC, <http://www.unodc.org/newsletter/en/perspectives/no03/page009.html> (last visited Sept. 11, 2015) (“[A]bout \$10 billion is derived from the initial ‘sale’ of individuals, with the remainder representing the estimated profits from the activities or goods produced by the victims of this barbaric crime.”).

<sup>136</sup> *Sex Trafficking*, *supra* note 129.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*; see also Holly Burkhalter, *Sex Trafficking, Law Enforcement and Perpetrator Accountability*, 1 ANTI-TRAFFICKING REV. 122, 132 (2012); U.S. Dep’t of State, *supra* note 126, at 33.

<sup>140</sup> *Sex Trafficking*, *supra* note 129.

<sup>141</sup> See *id.*

<sup>142</sup> See Burkhalter, *supra* note 139, at 124.

<sup>143</sup> *Id.*; CRC, *supra* note 2, at 1.



bribes to have them released right back into sexual slavery.<sup>144</sup> All too often these stories are heard.<sup>145</sup> Additionally, many of these child sex workers are arrested and put in jail and/or deported for prostitution and/or immigration violations where they are left without options and most often return to the sex trade, instead of being placed in shelters and rehabilitation facilities.<sup>146</sup> Rather than being treated as victims, they are treated as criminals.

In most cases, it is the lack of actual enforcement as well as the lack of potential for enforcement of Article 34 and the rest of the Convention that causes these atrocities and abuses to become perpetual, and for many children, inescapable.

### B. Child Marriage

*“Had I been married later, I’d have learned to read and write. . . . If I’d studied, I wouldn’t have had to work in the scorching heat, harvesting in the fields.”*

— Rukhmani, a twenty-six-year-old Indian mother of two, who was married at the age of six and started living with her husband when she was fifteen, 2011.<sup>147</sup>

Child marriage before the age of eighteen “is a form of sexual exploitation”<sup>148</sup> and “a fundamental violation of human rights,”<sup>149</sup> affecting girls in far greater numbers than boys in many countries worldwide.<sup>150</sup> One in four of all women aged twenty-to-twenty-four around the world were child brides.<sup>151</sup> Child marriages are promoted and encouraged by local communities, governments, and often parents,<sup>152</sup>

<sup>144</sup> Burkhalter, *supra* note 139, at 123.

<sup>145</sup> See, e.g., Sarah Montana Hart, *Destinations: A Comparison of Sex Trafficking in India and the United States*, 83 U. COLO. L. REV. 1149, 1168 (2012) (describing how police in India often visit brothels, take bribes, or cooperate in sex trafficking).

<sup>146</sup> April Rieger, *Missing the Mark: Why the Trafficking Victims Protection Act Fails to Protect Sex Trafficking Victims in the United States*, 30 HARV. J.L. & GENDER 231, 240, 243–44 (2007); see Burkhalter, *supra* note 139, at 124.

<sup>147</sup> Hedayat, *supra* note 117 (detailing the plights of child brides in Bangladesh and India).

<sup>148</sup> *A Brief Assessment*, *supra* note 5, at 335.

<sup>149</sup> UNICEF, *Child Marriage is a Violation of Human Rights, But is All Too Common*, <http://data.unicef.org/child-protection/child-marriage> (last updated May, 2015) [hereinafter *Child Marriage*].

<sup>150</sup> UNICEF, *Ending Child Marriage: Progress and Prospects* (2014), [http://www.unicef.org/media/files/Child\\_Marriage\\_Report\\_7\\_17\\_LR..pdf](http://www.unicef.org/media/files/Child_Marriage_Report_7_17_LR..pdf) [hereinafter *Progress and Prospects*].

<sup>151</sup> *Child Marriage*, *supra* note 149.

<sup>152</sup> Robert Jenson & Rebecca Thornton, *Early Female Marriage in the Developing World*, 11 GENDER & DEV. 9, 9 (2003).

being most common in remote villages where the practice has been existent for decades and where it is “fully supported by the entire community, and . . . rare for someone to inform the police so they can be stopped.”<sup>153</sup> A girl is put at risk for child marriage under a number of factors, including “poverty, the perception that marriage will provide ‘protection,’ family honour, social norms, customary or religious laws that condone the practice, an inadequate legislative framework, and the state of a country’s civil registration system.”<sup>154</sup>

Additionally, child marriage is one of the “underlying symptoms” of the “rapidly increasing gender gap” that exists in many countries due to sex-selective abortion.<sup>155</sup> Because today male births outnumber female births 108:100, in some signatory nations, there is a shortage of appropriately-aged women for marriage, and thus, men turn to younger girls to find wives.<sup>156</sup>

Most often in child marriages, young girls under the age of fifteen, and even as young as six (or younger), are married off to men over the age of eighteen.<sup>157</sup> Once married, these girls are no longer allowed to continue in their educations, and are often subject to forced labor, sexual abuse, and domestic violence at the hands of their older husbands.<sup>158</sup> Moreover, almost all of these girls become pregnant early on in the marriage, having children when they are just children themselves, without knowledge of

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<sup>153</sup> Hedayat, *supra* note 117; cf. Jenna Mark, *Current Development: Married at Eight Years Old: How United States Current Legal Remedies Are Inadequate to Protect the Victims of Child Marriages*, 18 NEW ENG. J. INT’L & COMP. L. 411, 413 (2012) (discussing how remote Ethiopian villages have Child marriage as common practice).

<sup>154</sup> *Child Marriage*, *supra* note 149.

<sup>155</sup> *A Brief Assessment*, *supra* note 5, at 335; see also Lynne Marie Kohm, *The Challenges of Teaching Gender Equality in a World of Gendercide*, 6 REGENT J. L. & PUB. POL’Y 1, 3–4 (2014) [hereinafter *The Challenges of Teaching Gender Equality*] (noting the large number of girls missing from Asia’s population as a result of sex-selective abortion).

<sup>156</sup> See *A Brief Assessment*, *supra* note 5, at 335; *The Challenges of Teaching Gender Equality*, *supra* note 155, at 4–5; see also Nicole M. Skalla, *China’s One-Child Policy: Illegal Children and the Family Planning Law*, 30 BROOK. J. INT’L L. 329, 349, 352 (2004); *Fact Sheet on Sex Selection Abortion: A Worldwide and U.S. Problem*, CHARLOTTE LOZIER INST. (May 30, 2012), <https://www.lozierinstitute.org/wp-content/uploads/2012/08/Sex-Selection-Abortion-A-Worldwide-and-U.S.-Problem-Fact-Sheets.pdf>.

<sup>157</sup> See, e.g., David Sim, *Bangladesh Child Marriage: 15-year-old Girl’s Heartbreaking Wedding Photos*, INT’L BUS. TIMES (Aug. 24, 2015), <http://www.ibtimes.co.uk/bangladeshchild-marriage-15-year-old-girls-heartbreaking-wedding-photos-1516832>; see, e.g., Stephanie Sinclair, *Child, Bride, Mother*, N.Y. TIMES, [http://www.nytimes.com/interactive/2015/02/08/opinion/sunday/exposures-child-bride-mother-stephanie-sinclair.html?\\_r=0](http://www.nytimes.com/interactive/2015/02/08/opinion/sunday/exposures-child-bride-mother-stephanie-sinclair.html?_r=0) (last visited Sept. 4, 2015); see Hedayat, *supra* note 117.

<sup>158</sup> See Hedayat, *supra* note 117; see also *Progress and Prospects*, *supra* note 150 (noting that child brides tend to have low levels of education).

how to care for a child or their own pregnant bodies.<sup>159</sup>

Unfortunately, the CRC does not include provisions that prohibit child marriage explicitly, however, provisions which work towards this goal are Articles 36 and 37, which generally state that signatory nations must protect children from “all other forms of exploitation prejudicial to any aspect of the child’s welfare”<sup>160</sup> and that “[n]o child shall be subjected to . . . cruel, inhuman or degrading treatment.”<sup>161</sup> Forcing a young girl under the age of fifteen to live with, have sex with, and carry the child(ren) of a man as old or older than her father is most certainly cruel, inhuman, and degrading.<sup>162</sup> Optional protocols to the CRC as well as a number of international treaties have been created to protect children against child marriage, but none have been effective in curbing this form of exploitation.<sup>163</sup> The ten countries with the highest percentages of child marriage are all CRC signatory nations.<sup>164</sup> After twenty-five years, it is clear that the CRC has done little, if not nothing to protect the hundreds of millions of women<sup>165</sup> who were forced to be child brides.

Ending child marriage is key to breaking the “intergenerational cycle of poverty” by allowing girls to stay in school, get an education, and become empowered to participate more fully in society with smaller, healthier families.<sup>166</sup> This issue must be better addressed by child advocates in the near future.

### C. Child Labor

*“I worked for him for a few months, cleaning and cooking, but he never paid me. . . . When I demanded my overdue money, he said I would have to have sex with him, then he would give me*

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<sup>159</sup> See *Progress and Prospects*, supra note 150 (demonstrating that: (1) in some countries, girls married before the age of fifteen are two to twelve times more likely to have three or more children by/between the ages of twenty and twenty-four than women who were married after the age of eighteen; and (2) child brides are less likely to receive medical care during pregnancy).

<sup>160</sup> CRC, supra note 2, at 55.

<sup>161</sup> *Id.*

<sup>162</sup> See generally *Progress and Prospects*, supra note 150.

<sup>163</sup> *A Brief Assessment*, supra note 5, at 336–37.

<sup>164</sup> *Progress and Prospects*, supra note 150 (indicating that Nepal, Burkina Faso, Ethiopia, Guinea, India, Central African Republic, Mali, Chad, Bangladesh, and Niger are the top ten countries with the highest rates of child marriages, with Niger being the highest overall (77%) for women aged twenty to forty-nine who were married before the age of eighteen, and with Bangladesh being the highest (39%) for women aged twenty to forty-nine who were married before the age of fifteen); see *Participating Countries*, supra note 4 (displaying the list of signatory nations to the CRC).

<sup>165</sup> See generally *Progress and Prospect*, supra note 150.

<sup>166</sup> *Id.*

*the money, but I refused so he beat me. After this I was too scared to ask for my money, so I did whatever he asked.”*

— Christine, human trafficking survivor who migrated from Zimbabwe to South Africa looking for work, 2014.<sup>167</sup>

Forced child labor, often referred to as labor trafficking, involves the wide range of activities surrounding the use of force, “physical threats, psychological coercion, abuse of the legal process, deception, or other coercive means to compel” a child to work.<sup>168</sup> Once a child’s labor is exploited, the child is a trafficking victim, regardless of the locality.<sup>169</sup> Children in every country in the world often engage “in paid and unpaid forms of work that are not harmful to them”; however, the United Nations classifies them as child laborers when they are “either too young to work or are involved in hazardous activities that may compromise their physical, mental, social, or educational development.”<sup>170</sup> Article 32 of the Convention addresses and specifically prohibits forms of child labor and exploitation, stating:

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular: (a) Provide for a minimum age or minimum ages for admission to employment; (b) Provide for appropriate regulation of the hours and conditions of employment; (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.<sup>171</sup>

<sup>167</sup> U.S. Dep’t of State, *supra* note 126, at 34.

<sup>168</sup> *Id.* at 33.

<sup>169</sup> *Id.* at 33, 35.

<sup>170</sup> See *150 Million Children*, *supra* note 108; see also UNICEF, *Impact of Unpaid Household Services on the Measurement of Child Labour*, at 1, 9–10 (Oct. 2013) (noting that, for purposes of a CRC violation, the UN considers a child to be a laborer when: (1) between the ages of five to eleven years, they work between one and twenty-eight hours of unpaid household services per week; (2) between the ages of twelve to fourteen years, they work at least fourteen hours of economic work or twenty hours of unpaid household services per week; or (3) between the ages of fifteen to seventeen years, they work at least forty-three hours of economic or unpaid household services per week).

<sup>171</sup> CRC, *supra* note 2, at 54–55.

According to United Nations statistics, an estimated 150 million children around the world are currently being subjected to child labor.<sup>172</sup> Approximately 13% of children aged five to fourteen in developing countries are involved in some sort of child labor, exploitation, or slavery.<sup>173</sup> In Africa alone, upwards of 25% of children are engaged in forms of labor that are harmful to their health.<sup>174</sup> What is highly troubling about these numbers is that the majority of the worst offenders are CRC signatory nations who have committed to protecting their children from such harms.<sup>175</sup> In China alone, over 5 million children are out of school and working in child labor situations.<sup>176</sup> There are countless types of forced labor that include children, whether it be physical work in factories, sweatshops, mills or fields; involuntary domestic servitude; debt bondage; production of illicit products; etc.<sup>177</sup> Too many young girls are subjected to sexual exploitation at the hands of their employers while engaged in forced labor as well.<sup>178</sup> With this many signatory nations doing nothing about child labor, it is clear they have failed to enforce and uphold the Convention itself.<sup>179</sup>

While it is true that, according to the International Labor Organization, there has been a “one third drop” in child labor since the

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<sup>172</sup> See *150 Million Children*, *supra* note 108 (excluding the statistics of China).

<sup>173</sup> See *id.*; Kelly E. Hyland, *The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, 8 HUM. RTS. BRIEF 30, 30 (2001).

<sup>174</sup> *150 Million Children*, *supra* note 108.

<sup>175</sup> See *id.* (indicating that Bolivia (26%), Burkina Faso (39%), Burundi (26%), Cameroon (42%), Central African Republic (29%), Chad (29%), Côte d'Ivoire (26%), Equatorial Guinea (28%), Ethiopia (27%), Ghana (34%), Guatemala (26%), Guinea (28%), Guinea-Bissau (38%), Kenya (26%), Malawi (26%) Nepal (34%), Niger (31%), Paraguay (28%), Peru (34%), Rwanda (29%), Togo (28%), and Zambia (41%), all CRC signatories, have child labor percentages that are upwards of 25%) (statistics of China and several other CRC signatories); *Participating Countries*, *supra* note 4 (listing signatory nations).

<sup>176</sup> *Rural China*, FREE THE CHILDREN, <http://www.freethechildren.com/international-programming/where-we-work/china/> (last visited Aug. 31, 2015); *Participating Countries*, *supra* note 4.

<sup>177</sup> *A Brief Assessment*, *supra* note 5, at 330; *Forced and Child Labour in the Cotton Industry*, WORLD VISION (2012), <http://campaign.worldvision.com.au/wp-content/uploads/2013/04/Forced-and-child-labour-in-the-cotton-industry-fact-sheet.pdf>; *India: Certified Textile Mills Reported to Have Child and Forced Labor – ICN*, INT'L INITIATIVE TO END CHILD LABOR (Nov. 26, 2014), <http://endchildlabor.org/?p=10523>; *Iran: Forgotten Children – Human Trafficking & Child Labor – Iran Focus*, INT'L INITIATIVE TO END CHILD LABOR (May 1, 2013), <http://endchildlabor.org/?p=9797>; See U.S. Dep't of State, *supra* note 126, at 14, 33–34.

<sup>178</sup> U.S. Dep't of State, *supra* note 126, at 33.

<sup>179</sup> See *Suffer the Little Children*, *supra* note 73, at 61 (noting that children are being used as laborers in CRC signatory nations at an unprecedented rate).

year 2000, the previous statistics are still all too real and far too high.<sup>180</sup> Decreasing child labor rates are clearly good news, however, “[c]hild advocates must demand a reexamination of this issue,” as “it is unclear what role the CRC has had in the drop in the numbers of children in forced labor.”<sup>181</sup> Regardless of any drop, most human rights organizations agree on numbers ranging between 150 million<sup>182</sup> and 168 million<sup>183</sup> children still involved in some sort of forced labor today. That is unacceptable, especially considering the 193 signatory nations that have committed to protect children from such harms.

#### D. Female Genital Mutilation

*“I lay in a pool of blood. After a few days, the bleeding stopped, and the daya [midwife] peered between my thighs and said, ‘All is well. The wound has healed, thanks be to God.’ But the pain was there, like an abscess deep in my flesh. . . . Since I was a child that deep wound left in my body has never healed.”*

— Nawal Ed Saadawi, eighty-year-old feminist activist who was a victim of female genital mutilation at the age of six in her native country of Egypt, 2011.<sup>184</sup>

Female genital mutilation (FGM) or “cutting” is a horrifying and gruesome cultural practice of physical mutilation of young girls by “painful genital cutting that continues its repressive physical, psychosocial, and psychological effects for a lifetime.”<sup>185</sup> While there are a few variations, the main goal of FGM is to either mutilate or completely remove a young girl’s clitoris with the intent of “deadening [the girl’s] sexual appetite.”<sup>186</sup> While the total removal of the clitoris (“excision”) is the most common type of FGM, performed on approximately 80% of those affected, there is a variation that is surprisingly worse, called

<sup>180</sup> Press Release, Stop Child Labor, Child Labor Coalition Welcomes Falling Estimated of Child Labor But Warns that Far Too Many Children Suffer the Worst Forms of Child Labor (Oct. 3, 2013), available at <http://stopchildlabor.org/?p=3649>.

<sup>181</sup> *A Brief Assessment*, supra note 5, at 330.

<sup>182</sup> See *150 Million Children*, supra note 108 (excluding statistics from China).

<sup>183</sup> Press Release, supra note 180.

<sup>184</sup> Genevieve Roberts, *Nawal El Saadawi: I Am Going to Carry on This Fight For Ever*, THE INDEPENDENT (Oct. 16, 2011), <http://www.independent.co.uk/news/people/profiles/nawal-el-saadawi-i-am-going-to-carry-on-this-fight-for-ever-2371378.html> (quoting NAWAL EL SAADAWI, *A DAUGHTER OF ISIS: THE EARLY LIFE OF NAWAL EL SAADAWI*, 74 (2009)).

<sup>185</sup> *A Brief Assessment*, supra note 5, at 337–38; see also Alexi N. Wood, *A Cultural Rite of Passage or a Form of Torture: Female Genital Mutilation from an International Law Perspective*, 12 HASTINGS WOMEN’S L.J. 347, 362–63, 366 (2001).

<sup>186</sup> Wood, supra note 185, at 353–54, 356.

“infibulation,” performed on 15% of those affected.<sup>187</sup> Infibulation is the process in which the clitoris, labia minora, and at least two-thirds of the labia majora are completely cut out and removed, and then the child is sewn back together.<sup>188</sup>

Contrary to the popular belief of practitioners, FGM has no factually proven or medically acknowledged health benefits.<sup>189</sup> Practitioners justify it in a number of ways, but most regard it as the girl’s rite of “passage into adulthood.”<sup>190</sup> Some justifications include religion (though there are no existent teachings of FGM in any formal religion, the practice is most common in Muslim communities); family honor and marriage (it preserves female virginity and thus, the family’s honor, as well as reduces a woman’s desire for sexual intercourse); hygiene and health (when, in reality, there are no recognized health benefits and FGM often has the opposite effect to that of promoting hygiene); and traditional tribal custom (if it is a tradition, most believe it simply cannot be altered or done away with).<sup>191</sup> In half the countries that practice FGM, it is performed on girls before the age of five.<sup>192</sup> In the other half, most cutting occurs between the ages of five and fourteen.<sup>193</sup> Additionally, a host of health problems and sometimes death are associated with cutting, making the procedure all the more traumatizing for those who undergo it.<sup>194</sup>

While FGM is not expressly mentioned in the CRC, there are multiple

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<sup>187</sup> *Id.* at 354.

<sup>188</sup> *Id.* Infibulation is the worst type of FGM and often causes the woman pain for the rest of her life. *See id.* at 354, 363. Because of the of the procedure’s invasiveness, there are many complications involved, and because it is typically performed under imperfect conditions, infections and death are not uncommon. *See id.* at 358, 362–363; *see also id.* at 354–56 (“The raw edges of the labia majora are then stitched together with catgut, silk or thorns, and the girl is bound in cloth from her hip to her ankles and kept immobile, allowing the edges of the labia to heal together. A small opening for the passage of urine and menstrual blood is left by inserting a tiny piece of wood or a reed. Occasionally antiseptic powder may be applied to the wound, but more usually a paste made of herbs, earth, dung, eggs or ashes is rubbed on the genital area.”).

<sup>189</sup> *Id.* at 358–59.

<sup>190</sup> *Id.* at 356.

<sup>191</sup> *Id.* at 356–60.

<sup>192</sup> UNICEF, *Female Genital Mutilation/Cutting: A Statistical Overview and Exploration of the Dynamics of Change*, at 2, 47, 50 fig.5.3. (July 2013), [http://www.childinfo.org/files/FGCM\\_Lo\\_res.pdf](http://www.childinfo.org/files/FGCM_Lo_res.pdf) [hereinafter *FGM/Cutting*].

<sup>193</sup> *Id.*

<sup>194</sup> *See id.* at iv, 43, 94 (“A large body of literature has documented the adverse health consequences of FGM/C over both the short and long term. Immediate complications include bleeding, delayed or incomplete healing, and infections. Long-term consequences are more difficult to attribute, but may include damage to adjacent organs, sterility, recurring urinary tract infections, the formation of dermoid cysts and even death. Birth complications may also arise, leading to increased need for Caesarean sections and excessive bleeding during delivery.”).

areas within the Convention (Articles 19, 24, and 37) that serve to protect young girls from FGM. Article 19 requires signatory nations to take all appropriate “legislative, administrative, social and educational measures to protect [children] from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation . . . while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”<sup>195</sup> “Article 24 requires [signatories] to recognize that children have the right to enjoy ‘the highest attainable standard of health’ and . . . calls upon states to take action to reduce . . . child mortality.”<sup>196</sup> Section 3 of Article 24 also mandates that “States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children,”<sup>197</sup> and Article 37 prohibits “torture or other cruel, inhuman or degrading treatment or punishment.”<sup>198</sup>

What makes FGM all the more troubling is the fact that it persists when so many young women in countries that practice it sincerely feel that it should stop.<sup>199</sup> Nonetheless, figures put forth by the government of Egypt (a CRC signatory nation), for example, put the rate of female genital mutilation among women between the ages of fifteen and forty-nine at a shocking 91% and at 74% just for girls between the ages of fifteen and seventeen.<sup>200</sup> Currently, there are twenty-nine countries where FGM is known to be prevalent, concentrated in the area between the Atlantic Coast and the Horn of Africa;<sup>201</sup> however, UNICEF estimates that one in five of the 125 million women who have undergone FGM lives in Egypt.<sup>202</sup> The practice is almost universal in Egypt, Somalia, Guinea, and

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<sup>195</sup> CRC, *supra* note 2, at 50.

<sup>196</sup> Wood, *supra* note 185, at 383 (quoting CRC, *supra* note 2, at 52).

<sup>197</sup> CRC, *supra* note 2, at 52.

<sup>198</sup> *Id.* at 55.

<sup>199</sup> See *FGM/Cutting*, *supra* note 192, at 54 fig.6.1 (noting that despite the social and cultural justifications for FGM, many women disagree with them. Yet, most of these women, especially in the countries where it is most widely practiced, will experience FGM due to social expectations); see also Wood, *supra* note 185, at 360 (detailing a story of three daughters in Mali who had FGM forced upon them by their grandmother, despite their mother’s wishes that they be spared from undergoing the practice).

<sup>200</sup> Mona Eltahawy, *Fighting Female Genital Mutilation*, N.Y. TIMES (Nov. 16, 2014), [http://www.nytimes.com/2014/11/17/opinion/fighting-female-genital-mutilation.html?\\_r=0](http://www.nytimes.com/2014/11/17/opinion/fighting-female-genital-mutilation.html?_r=0); *Participating Countries*, *supra* note 4.

<sup>201</sup> See *FGM/Cutting*, *supra* note 192, at 2, 26 map.4.1.

<sup>202</sup> Eltahawy, *supra* note 200.



Djibouti<sup>203</sup> (with all except Somalia being CRC signatories). Out of the twenty-nine total countries in which FGM is widely practiced, twenty-eight (all except Somalia) are signatories.<sup>204</sup>

Although most of these countries have national laws in place prohibiting FGM, more needs to be done to put an end to this practice.<sup>205</sup> This is especially true considering the fact that in some countries, mothers are beginning to catch on; refusing to allow their daughters to undergo cutting, wanting them to be spared the pain and shame they themselves underwent as children<sup>206</sup> and recognizing that the only true purpose of cutting is to repress women.<sup>207</sup> Because so many of the justifications and “benefits” of FGM are based on lies,<sup>208</sup> people need to be educated on this subject so that even those who once believed in its purposes can do away with it and be forces for change. It is clear that States Parties are not doing their part to put a stop to FGM, and the mere fact that it persists after twenty-five years under the CRC is a strong indication that the CRC is ineffective at eliminating even the most heinous crimes against children.

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<sup>203</sup> See *FGM/Cutting*, *supra* note 192, at 27 box.4.4 (indicating that among women between the ages of fifteen to forty nine, 91% in Egypt, 98% in Somalia, 96% in Guinea, and 93% in Djibouti have been victims of FGM and noting the map under “Prevalence”); *Participating Countries*, *supra* note 4 (noting that Somalia is not a CRC signatory nation).

<sup>204</sup> See *FGM/Cutting*, *supra* note 192, at 54 fig.6.1 (noting that Senegal, Gambia, Guinea-Bissau, Guinea, Sierra Leone, Liberia, Côte d’Ivoire, Burkina Faso, Ghana, Togo, Benin, Djibouti, Eritrea, Mauritania, Mali, Niger, Nigeria, Chad, Cameroon, Central African Republic, Sudan, Egypt, Iraq, Yemen, Ethiopia, Somalia, Kenya, Uganda, and the United Republic of Tanzania are the countries which practice FGM, ranging in percentages of less than 10% to 98%. Every one of these countries except for Somalia is a CRC signatory nation); *Participating Countries*, *supra* note 4.

<sup>205</sup> See *Female Genital Mutilation (FGM): Legal Prohibitions Worldwide*, CTR. FOR REPROD. RIGHTS, <http://www.reproductiverights.org/document/female-genital-mutilation-fgm-legal-prohibitions-worldwide> (last visited Oct. 7, 2015); Eltahawy, *supra* note 200 (discussing the idea that more must be done to end FGM: “[l]aws are not enough. Countries that have succeeded in lowering the rate of female genital mutilation, like Senegal, have used varied methods: alternative rites of passage into womanhood, campaigns in which brides and bridegrooms state that they both reject the custom, and the involvement of clerics and priests. Higher education levels, family relocation to big cities and sometimes the death of the family patriarch can make a difference.”).

<sup>206</sup> See, e.g., Wood, *supra* note 185, at 360 (detailing a story of a mother in Mali who did not want her three daughters to be cut).

<sup>207</sup> See Natalia Fricker, *So, What’s So Bad About FGM?*, ACTIONAID UK (Jan. 30, 2015), <http://fgm.co.nz/beliefs-and-issues>; Kathleen Grace, *Why is Female Genital Mutilation Practiced?*, QUORA (July 17, 2014), <https://www.quora.com/Why-is-female-genital-mutilation-practiced>.

<sup>208</sup> See, e.g., Wood, *supra* note 185, at 358–59.

### E. Child Soldiering

*“When you kill for the first time, automatically, you change . . . out of being innocent, you’ve now become guilty. You feel like you’re becoming part of them, part of the rebels.”*

— Norman Okello, a Ugandan who was abducted from his family at the age of 12 and forced to fight in Joseph Kony’s Lord’s Resistance Army (LRA), later escaping, 2014.<sup>209</sup>

It has been estimated that at any given time, over 300,000 children<sup>210</sup> under the age of eighteen are involved as soldiers in some form of armed conflict around the world.<sup>211</sup> The International Institute for Strategic Studies reports that there are approximately fifty active armed conflicts around the world each year, and as of 2013, the number settled at forty-one.<sup>212</sup> Of course, these conflicts require soldiers, and because of disease and low life expectancies among adults in many developing countries,<sup>213</sup> children become more likely to be used.<sup>214</sup> In many countries children ranging in age from seven to eighteen<sup>215</sup> are coerced, abducted, or forced to soldier in armed conflicts<sup>216</sup> by government and non-governmental forces.<sup>217</sup> Recruiters capitalize on children’s impressionable natures and tough circumstances; forcibly recruiting them because they “obey orders

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<sup>209</sup> Will Storr, *Kony’s Child Soldiers: ‘When You Kill For The First Time, You Change,’* THE TELEGRAPH (Feb. 12, 2014), <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/uganda/10621792/Konys-child-soldiers-When-you-kill-for-the-first-time-you-change.html>.

<sup>210</sup> Gee, *supra* note 106, at 2. However, note that “[t]he politics of research hinders any more accurate measurement, as commanders and governments prefer not to disclose true figures for child soldiers.” *Id.*

<sup>211</sup> RACHEL BRETT & IRMA SPECHT, *YOUNG SOLDIERS: WHY THEY CHOOSE TO FIGHT*, 1 (2004).

<sup>212</sup> Richard Norton-Taylor, *Global Armed Conflicts Becoming More Deadly, Major Study Finds*, THE GUARDIAN (May 20, 2015), <http://www.theguardian.com/world/2015/may/20/armed-conflict-deaths-increase-syria-iraq-afghanistan-yemen>; see *A Brief Assessment*, *supra* note 5, at 331–32.

<sup>213</sup> See Gee, *supra* note 106, at 5; U.N. Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *Child Recruitment*, [https://childrenandarmedconflict.un.org/publications/WorkingPaper-1\\_SixGraveViolationsLegalFoundation.pdf](https://childrenandarmedconflict.un.org/publications/WorkingPaper-1_SixGraveViolationsLegalFoundation.pdf) (last visited Sept. 10, 2015).

<sup>214</sup> See U.N. Secretary-General, *Children and Armed Conflict*, 2, 7–8, 17, General Assembly, U.N. Doc. A/67/845-S/2013/245 (May 15, 2013).

<sup>215</sup> *A Brief Assessment*, *supra* note 5, at 331–32.

<sup>216</sup> See Mary-Hunter Morris, *Babies and Bathwater: Seeking an Appropriate Standard of Review for the Asylum Applications of Former Child Soldiers*, 21 HARV. HUM. RTS. J. 281, 282–83, 286–87, 289–90, 297 (2008).

<sup>217</sup> Gee, *supra* note 106, at 2; see also Claude Rakisits, *Child Soldiers in the East of the Democratic Republic of the Congo*, 27 REFUGEE SURVEY QUARTERLY 108, 108–09 (2008).

more readily” or encouraging the “voluntary” enlistment in armies by highlighting the dearth of other viable opportunities due to poverty, or by making military life appear attractive and glorious.<sup>218</sup> For these same reasons children will sometimes receive approval from their own parents for joining armed conflicts.<sup>219</sup> Additionally, the advent of lightweight, inexpensive weapons, as well as the poor or non-existent national birth registration systems, have made the use of children in armed conflicts much less complicated.<sup>220</sup>

Once in the army, children are forced to do terrible things in order to be initiated, such as kill a family member or fellow soldier.<sup>221</sup> Child soldiers involved in the LRA conflict, especially, have borne witness to some of the most unspeakable crimes in human history.<sup>222</sup> Norman Okello, an LRA child soldier escapee, detailed the 2002 Kitgum massacre this way:

A mother was instructed to eat her son and was beaten to death with a padlock when she refused; toddlers were tossed into burning buildings; the heads of the disabled were staved in with the butts of rifles; two young boys were told to beat each other to death with sticks while soldiers cheered them on.<sup>223</sup>

Sadly, experiences for many child soldiers around the world are not uncommon from Norman's. Children in armed conflicts elsewhere are especially vulnerable, due to the “absence of clear front lines and identifiable opponents,” the use of “terror tactics” to force children to succumb to the army authority, and the use of children as “suicide bombers and human shields.”<sup>224</sup>

The LRA conflict, however, is not the only one utilizing child soldiers. In Afghanistan in 2012, there were sixty-six cases reported of the use of

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<sup>218</sup> Gee, *supra* note 106, at 2–3.

<sup>219</sup> *Id.* at 3.

<sup>220</sup> See *id.* at 2–3; see also U.N. Secretary-General, *Promotion and Protection of the Rights of Children: Impact of Armed Conflict on Children*, ¶ 36, General Assembly, U.N. Doc. A/51/306 (Aug. 26, 1996); Steven Hicks, *The Political Economy of War-Affected Children*, 575 ANNALS AM. ACAD. POL. & SOC. SCI. 106, 114–15 (2001).

<sup>221</sup> See Ranee Khooshie Lal Panjabi, *Sacrificial Lambs of Globalization: Child Labor in the Twenty-First Century*, 37 DENVER J. INT'L L. & POL'Y 421, 449 (2009); see also Storr, *supra* note 209 (detailing the experience of one ex-LRA child soldier).

<sup>222</sup> See generally Storr, *supra* note 209.

<sup>223</sup> See Chris Ocuwun, *All Is Not Rosy in Kitgum*, NEW VISION, <http://www.newvision.co.ug/mobile/Detail.aspx?NewsID=639264&CatID=434> (last visited Sept. 10, 2015) (noting that the massacre described above took place in 2002). See generally Storr, *supra* note 209.

<sup>224</sup> U.N. Secretary-General, *supra* note 214, at 2.

young boys in armed forces.<sup>225</sup> While sixty-six may seem like an insignificant number, what must be remembered is that these are only the cases that are *reported*. In reality, the numbers are much higher.<sup>226</sup> The same year in the Central African Republic there were forty-one documented cases of child recruitment, thirty-four in Chad, sixty-five in Côte d'Ivoire (though the number the year before was 336), and 578 in the Democratic Republic of the Congo.<sup>227</sup> In Iraq in 2012, there were 302 children being held in detention facilities for terror-related activities.<sup>228</sup> All are signatory nations to the CRC.<sup>229</sup> Uganda has not made an official report since 2006, though it is known through eyewitnesses and escaped soldiers that large numbers exist; and in Mali the situation is similar, with reports that indicate large numbers of children carrying weapons as part of structured governmental forces.<sup>230</sup>

The CRC has been of little help to the plights of child soldiers everywhere. Article 38, which has been the cause of multiple problems in the CRC's implementation, states in part: "States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces."<sup>231</sup> However, Article 1 states that a child is "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."<sup>232</sup> These two articles work in conjunction to make the prohibition against children in armed conflict essentially meaningless, due to the fact that, according to Article 1, individuals under the age of eighteen are considered children unless under national law, adulthood is reached earlier. This means that "nations may recogni[z]e children as adults, despite the CRC[s] definition of childhood," which is then only blurred further when compared to Article 38's prohibition of children from armed conflict under the age of *fifteen*.<sup>233</sup> This discrepancy in the CRC is one that has the international community

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<sup>225</sup> *Id.* at 7. Around the same time period, forty-seven of children were used for armed groups like the Taliban, some as young as eight years old, and some were used for dangerous activities like planting explosive devices. *Id.* at 7–8.

<sup>226</sup> *10 Shocking Facts About Child Soldiers in Africa*, ANSWERS AFG., <http://answersafrica.com/child-soldiers-in-africa.html> (last visited Oct. 7, 2015); cf. Haley Elizabeth Chafin, *Stolen Innocence: The United Nations' Battle Against the Forced Recruitment and Use of Child Soldiers in Myanmar*, 43 GA. J. INT'L & COMP. L. 185, 198 (2014) (discussing the difficulty in estimating the number of child-soldiers in Myanmar).

<sup>227</sup> *10 Shocking Facts*, *supra* note 226, at 10, 12–14.

<sup>228</sup> *Id.* at 17.

<sup>229</sup> See *Participating Countries*, *supra* note 4.

<sup>230</sup> See *A Brief Assessment*, *supra* note 5, at 333 n.57.

<sup>231</sup> See CRC, *supra* note 2, at 56; Holly Cullen, *The Role of International Law in the Elimination of Child Labor*, 28 PROC. ASPECTS OF INT'L L. MONOGRAPH 1, 85 (2007).

<sup>232</sup> CRC, *supra* note 2, at 46.

<sup>233</sup> Gee, *supra* note 106, at 3–4.

asking just what or who children are, and results in a broad disregard for the Convention in general.<sup>234</sup>

#### IV. WHY THE UNITED STATES HAS NOT RATIFIED THE CRC

Despite widespread support from individual U.S. citizens and groups for the overall objectives of the CRC, U.S. policymakers are concerned about the CRC's effectiveness for protecting children's rights.<sup>235</sup> In 1995, the Clinton Administration signed the CRC but chose not to submit it to the Senate for approval (which would thus complete ratification) or dismissal because of the strong opposition coming from several members of Congress.<sup>236</sup> The George W. Bush Administration opposed the CRC, citing "serious political and legal concerns," in that it tread too much upon U.S. laws already in place regarding privacy and family rights.<sup>237</sup> Opponents within Congress argue that the CRC undermines U.S. sovereignty by allowing the UN to determine the best interests of American children, as well as that it interferes with the rights of parents to educate and discipline their children.<sup>238</sup>

The current Obama Administration stated in 2008 that it would focus renewed attention on the possibility of U.S. ratification of the CRC through an interagency policy review, however, seven years later, the U.S. still has not ratified the Convention.<sup>239</sup> This is perhaps indicative of the apparent inadequacy of the treaty, and the multitude of possible conflicts (including those discussed in section II of this Note) that would have to be dealt with should the U.S. choose to ratify.<sup>240</sup>

##### A. Threats to U.S. and State Sovereignty

The system of federalism is one upon which the structure of the

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<sup>234</sup> See generally *id.*; Marsha L. Hackenberg, *Can the Optional Protocol for the Convention on the Rights of the Child Protect the Ugandan Child Soldier?*, 10 IND. INT'L & COMP. L. REV. 417, 429–30 (2000).

<sup>235</sup> See BLANCHFIELD, *supra* note 3, at 2.

<sup>236</sup> See *id.* at 1.

<sup>237</sup> See *id.*

<sup>238</sup> See *id.* at 8–10.

<sup>239</sup> *Id.* at 1, 4; *Participating Countries*, *supra* note 4.

<sup>240</sup> See Hafen & Hafen, *supra* note 21, at 450; *A Brief Assessment*, *supra* note 5, at 343; Barbara J. Nauck, *Implications of the United States Ratification of the United Nations Convention on the Rights of the Child: Civil Rights, the Constitution and the Family*, 42 CLEV. ST. L. REV. 675, at 678 (1994); Lainie Rutkow & Joshua T. Lozman, *Suffer the Children: A Call for United States Ratification of the United Nations Convention on the Rights of the Child*, 19 HARV. HUM. RTS. J. 161, 179–80 (2006); Wilkins et al., *supra* note 72, at 412, 450.

United States government heavily relies and highly values.<sup>241</sup> However, because the CRC (more so than most other human rights treaties) addresses issues that are considered in the U.S. to be exclusively under the jurisdiction of state or local governments, if the CRC were ratified it would risk undermining federalism, and thus throw off the balance of governmental powers.<sup>242</sup> Admittedly, the majority of the tenets of the CRC are agreed upon and consistent with laws already in existence at some level within the U.S., whether that be federal, state, or local.<sup>243</sup> Issues addressed in the CRC wherein federal and state laws would conflict include: “juvenile justice, child labor, child education, welfare, custody and visitation, and adoption.”<sup>244</sup> State and local jurisdictions tend to address these issues differently than the federal government, and if the CRC were ratified, then federal laws would have to be applied to issues “traditionally handled by individual states.”<sup>245</sup>

One of the principle fears among opponents to the CRC is the threat the CRC poses to U.S. sovereignty, aside from Federalism.<sup>246</sup> These opponents “maintain that since ratified treaties are considered the ‘supreme Law of the Land’<sup>247</sup> under the U.S. Constitution, the Convention could supersede both national [and state] and local laws.”<sup>248</sup> Therefore, if the CRC is ratified and becomes the “supreme Law of the Land,” the CRC Committee would then have authority over the U.S. government and private American citizens in all actions concerning children.<sup>249</sup> This would in turn have a profound effect on parental rights and the ability of federal, state, and local governments to govern their own people; and most dangerously, it would inhibit the people’s right to govern and represent

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<sup>241</sup> See Bruce Ledewitz, *The Present and Future of Federalism*, 43 DUQ. L. REV. 645, 645–46 (2005); William J. Kovatch, Jr., *Left Out of the Game: Fast-Track Non-Tariff Barriers, and the Erosion of Federalism*, 5 ILSA J. INT’L & COMP. L. 71, 78 (1998–1999).

<sup>242</sup> BLANCHFIELD, *supra* note 3, at 7. Throwing off the balance of governmental powers/federalism would undermine U.S. sovereignty. See *id.* at 6.

<sup>243</sup> *Id.* at 7, 9; David P. Stewart, *Ratification of the Convention on the Rights of the Child*, 5 GEO. J. FIGHTING POVERTY 161, 166 (Summer 1998).

<sup>244</sup> BLANCHFIELD, *supra* note 3, at 7.

<sup>245</sup> *Id.* (noting that allowing what was once state jurisdiction to become federal jurisdiction poses a threat to state sovereignty).

<sup>246</sup> *Id.* at 8–9.

<sup>247</sup> U.S. CONST. art. VI (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding”).

<sup>248</sup> BLANCHFIELD, *supra* note 3, at 8–9.

<sup>249</sup> See *id.* at 9. Furthermore, many of these U.S. opponents to the CRC have also disagreed with some of the CRC Committee’s decisions about “parental rights, abortion, and the role of [the] national government[.]” in the rearing of children. *Id.* at 9.

themselves.<sup>250</sup>

### B. *Loss of Certain Parental Rights*

There are a number of reasons why the CRC has American parents fearing for their parental rights, as some interpret the Convention to have the ability to give the CRC Committee or the federal government “authority over the family structure and how parents choose to raise their children.”<sup>251</sup> Trent Franks of the 112th Congress noted that the “liberty of parents’ to raise and educate their children is a ‘fundamental right,’ and that no treaty may ‘supersede, modify, interpret, or apply’ this right.”<sup>252</sup> Many American parents agree with Franks, believing that they “should be able to raise their [own] children in [the] way that reflects their morals . . . without [any outside] interference.”<sup>253</sup> These beliefs are well-founded, as a number of United States Supreme Court cases have issued rulings in alignment with these attitudes.<sup>254</sup>

Additionally, critics are concerned with the “best interests of the child” provision in particular, referenced in Articles 3, 9, 18, and 40. They worry that allowing the CRC Committee to dictate what is in the best interests of U.S. children “severely undermines the role of U.S. parents to determine how to raise, educate, and discipline their children.”<sup>255</sup> The Supreme Court also dealt specifically with this idea in 1993 in *Reno v. Flores*, stating:

“[T]he best interests of the child” is not the legal standard that governs parents’ or guardians’ exercise of their custody: So long

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<sup>250</sup> See *id.* at 9; Susan Kilbourne, *Placing the Convention on the Rights of the Child in an American Context*, 26 HUM. RTS. 27, 28 (1999).

<sup>251</sup> See *id.* at 9; see also Michael Smith, *Home-Schooling: U.N. Treaty Might Weaken Families*, THE WASHINGTON TIMES (Jan. 11, 2009), <http://www.washingtontimes.com/news/2009/jan/11/un-treaty-might-weaken-families/>.

<sup>252</sup> BLANCHFIELD, *supra* note 3, at 7.

<sup>253</sup> *Id.* at 9.

<sup>254</sup> See *Troxel v. Granville*, 530 U.S. 57, 72–73 (2000) (“[T]he Due Process Clause does not permit a State to infringe on the fundamental right of parents to make childrearing decisions simply because a state judge believes a ‘better’ decision could be made.”); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) (“We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected.”); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (“[T]his case involves the fundamental interest of parents, as contrasted with that of the State, to guide the religious future and education of their children.”); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (“It is cardinal with us that the custody, care and nurture of the child reside first in the parents . . . . It is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.”); *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) (“The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”).

<sup>255</sup> BLANCHFIELD, *supra* note 3, at 9–10.

as certain minimum requirements of child care are met, the interests of the child may be subordinated to the interests of other children, or indeed even to the interests of the parents or guardians themselves.<sup>256</sup>

Based on the outcomes of Supreme Court rulings on the issue, it is likely that U.S. ratification of the CRC would lead to its implementation being sued upon and declared unconstitutional under the Due Process clause.

Other aspects of the Convention that could be interpreted in ways that could possibly lead to parental rights conflicts are the provisions that give children the rights to privacy (parents may not have the right to search their children's rooms or be notified of an arrest); freedom of expression (children may be able to disregard parental authority or discipline); freedom of thought, conscience and religion (may limit parents' ability to raise their children according to one religion or set of beliefs); access to information (children may have the unhindered right to read/watch whatever they wish, even if parents find it objectionable); education (home-schooling may not be possible without government interference); freedom of association (may limit parents' ability to prohibit their children from associating with people or groups they do not approve of); and protection from corporal punishment (could prohibit discipline via spanking).<sup>257</sup>

For all of these reasons, the CRC does not gain much support American parents who wish to have a significant say in their child's upbringing.

### C. *Redundancy and Ineffectiveness*

While some opponents to the CRC agree with its overall goal to protect the rights of children on an international basis, they do not agree that the Convention is "an effective mechanism for achieving this goal."<sup>258</sup> Many critics cite the fact that countries such as China and Sudan, which are some of the most well-known children's rights abusers in the world, and are parties to the Convention does not vest much confidence in its

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<sup>256</sup> *Reno v. Flores*, 507 U.S. 292, 304 (1993). Note that this case did not deal with the Convention, but rather the legal standard of the best interests of the child, which is also laid out in Article 3 of the CRC.

<sup>257</sup> BLANCHFIELD, *supra* note 3, at 10–11; *see also* Nauck, *supra* note 240, at 693 (discussing how the "assertive language" in the Article 13 of the CRC "presumably mean[s] that [the CRC] would prevail where there is a conflict between the child's desire to [for example] freely express herself and the parent's interest in curbing that expression."); Wilkins et al., *supra* note 72, at 413–16 (discussing how the rights under the CRC would make it an "unwelcome and unnecessary intrusion" in the United States).

<sup>258</sup> BLANCHFIELD, *supra* note 3, at 15.



effectiveness as an instrument for change.<sup>259</sup> Some even argue that for many States Parties worldwide, the “CRC may serve as a façade for governments that abuse children’s rights.”<sup>260</sup> Further, when States become parties to the treaty, they can issue reservations and declarations which include aspects of the document with which they disagree, etc., however, some declarations and reservations attached to the Convention by certain countries directly conflict with and undermine the purpose of the CRC, making it seemingly meaningless for that particular country.<sup>261</sup>

Additionally, as mentioned above, the United States already has federal, state, and local laws in place that serve to protect children in almost all the ways the Convention does.<sup>262</sup> Perhaps the most common sense reasoning behind the U.S. choosing not to ratify the Convention, however, is history. Over the past twenty-five years the world has seen the overall lack of effective change as a result of the CRC, and it is likely that U.S. lawmakers simply feel that ratification is pointless.<sup>263</sup>

#### V. SOLUTIONS: WHAT CAN BE CHANGED TO MAKE CRC ENFORCEMENT MORE EFFECTIVE?

The following discussion lists several possible approaches for improving the likelihood of effective implementation and enforcement of the CRC. However, it is important to note that these approaches when applied together will achieve the greatest amount of change, and that merely choosing one or the other will not substantiate much progress. If the CRC’s rights are to be granted and properly exercised by all children, a “multidisciplinary approach” may work most effectively by demonstrating the application of the CRC’s standards through “all people who deal with children.”<sup>264</sup>

##### A. *Do Away With the Rights Framework*

Much of the CRC’s ineffectiveness stems from the fact that it gives rights to children, “who are legally incapable of enforcing their own rights.”<sup>265</sup> The harsh reality, which the drafters of the CRC did not seem

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<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

<sup>261</sup> See *id.* at 15; see also Nsongurua J. Udombana, *War Is Not Child’s Play! International Law and the Prohibition of Children’s Involvement in Armed Conflicts*, 20 TEMP. INT’L & COMP. L.J. 57, 60 (2006).

<sup>262</sup> See BLANCHFIELD, *supra* note 3, at 7; Stewart, *supra* note 243, at 166.

<sup>263</sup> See BLANCHFIELD, *supra* note 3, at 15, 17 (noting that critics do not believe that the treaty is effective, and that U.S. law is superior to the standards set forth in agreements such as the CRC).

<sup>264</sup> See *A Brief Assessment*, *supra* note 5, at 349.

<sup>265</sup> See *id.* at 350.

to anticipate, is that in order for children's rights to be realized, they must be enforced and supported by adults.<sup>266</sup> Thus, despite the autonomy that the CRC attempts to grant children, children are unable to be autonomous.<sup>267</sup>

Furthermore, most children have no concept of rights, as they are too young and immature to have the capacity to exercise them,<sup>268</sup> and thus giving them rights is ineffective because they do not know what to do with them.<sup>269</sup> Additionally, there is a significant "distinction . . . between rights of protection and rights of choice for children."<sup>270</sup> Protection rights are the better option for children, because they "do not depend on any minimum level of capacity,"<sup>271</sup> whereas choice rights "grant individuals the authority to make affirmative and legally binding decisions, such as voting, marrying, making contracts, exercising religious preferences, or choosing whether and how to be educated."<sup>272</sup> Quite simply, young children are unable to make those sorts of decisions.<sup>273</sup>

Therefore, the CRC should either be amended to include only the rights of protection and then simply revert to the "best interests of the child" legal standard,<sup>274</sup> while continuing to maintain parental rights on a greater scale. Because children are considered to be anywhere within the age range of zero to eighteen years old, the choice rights may be beneficial for some but cannot apply to all.

### B. *Financial Incentives/Consequences*

As humans, we are influenced and motivated by money.<sup>275</sup> Especially in developing countries that are plagued by poverty, "financial incentives for following and authentically implementing the best interests objectives of the CRC might be useful enforcement mechanisms."<sup>276</sup> There are a number of States Parties to the CRC and members of the UN that are

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<sup>266</sup> *Id.*

<sup>267</sup> See Wilkins et al., *supra* note 72, at 417–19.

<sup>268</sup> *Id.* at 417 ("Children are not autonomous. They are, by definition, 'immature' - socially, mentally, emotionally, and physically").

<sup>269</sup> See Wilkins et al., *supra* note 72, at 417.

<sup>270</sup> Hafen & Hafen, *supra* note 21, at 460.

<sup>271</sup> *Id.* at 461. These rights "include such safeguards as rights to property, rights to physical care and security, and rights to procedural due process." *Id.*

<sup>272</sup> *Id.*

<sup>273</sup> See Wilkins et al., *supra* note 72, at 417.

<sup>274</sup> See generally *Tracing the Foundations*, *supra* note 73.

<sup>275</sup> See Daniel T. Ostas, *When Fraud Pays: Executive Self-Dealing and the Failure of Self-Restraint*, 44 AM. BUS. L.J. 571, 601 n.9 (2007) ("[O]ne does not have to be an economist to recognize that people are motivated, at least in part, by pecuniary incentives.").

<sup>276</sup> *A Brief Assessment*, *supra* note 5, at 349.

sincere about the advancement of children's rights, whether that be through the CRC itself or other means.<sup>277</sup> These financial incentives could likely be funded by such States Parties.<sup>278</sup>

The United States, though not a signatory to the CRC, has put forth a viable model for financial incentivizing which could be used by the UN and CRC implementers. This comes in the form of the annual "Trafficking in Persons" report, which includes a full evaluation of governments' perceived efforts to acknowledge and combat human trafficking within their borders, and then ranks them, dividing nations into one of four tiers based on their compliance with the standards of the Trafficking Victims Protection Act of 2000 ("TVPA").<sup>279</sup> The Act is very similar to the CRC in that it is a human rights-focused law which outlines standards to "ensure just and effective punishment of [human] traffickers, and to protect their victims."<sup>280</sup> Each country is assigned a ranking of Tier 1,<sup>281</sup> Tier 2,<sup>282</sup> Tier 2 Watch List,<sup>283</sup> and Tier 3.<sup>284</sup> Countries assigned a Tier 3 ranking "may be subject to certain restrictions on bilateral assistance, whereby the U.S. government may withhold or withdraw non-humanitarian, non-trade-related foreign assistance."<sup>285</sup> Many countries rely on nations like the United States for aid, so the potential for withdrawal of these much-

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<sup>277</sup> See *id.* at 326, 341.

<sup>278</sup> See *id.* at 349 n.159 (noting how financial incentives for following the CRC may be useful mechanisms for enforcement and describing how such funding could be funded by member nations of the UN who are sincerely interested in protecting children through the CRC).

<sup>279</sup> See generally U.S. Dep't of State, *supra* note 126.

<sup>280</sup> Victims of Trafficking and Violence Protection Act of 2000, 114 Stat. 1464, 1466, Public Law No. 106-386 (2000).

<sup>281</sup> U.S. Dep't of State, *supra* note 126, at 43 ("Countries whose governments fully comply with the TVPA's minimum standards for the elimination of trafficking.").

<sup>282</sup> *Id.* ("Countries whose governments do not fully comply with the TVPA's minimum standards but are making significant efforts to bring themselves into compliance with those standards.").

<sup>283</sup> *Id.* (noting that tier 2 Watch List includes "[c]ountries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards, and for which: (a) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; (b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year, including increased investigations, prosecution, and convictions of trafficking crimes, increased assistance to victims, and decreasing evidence of complicity in severe forms of trafficking by government officials; or (c) the determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional steps over the next year.").

<sup>284</sup> *Id.* ("Countries whose governments 'do not fully comply with the TVPA's minimum standards and are not making significant efforts to do so.'").

<sup>285</sup> *Id.* at 44.

needed funds motivates these nations to take the steps necessary to adhere to the TVPA, and in turn, betters the lives of their citizens.<sup>286</sup> While this is more of a financial consequence, it is still effective, and something similar could be used by the Committee on the Rights of the Child or the UN to better enforce the provisions of the CRC in signatory nations.

### C. *Expand the Convention to Cover NGOs*

In confronting challenges such as child soldiering, the need to bind non-governmental (NGO) entities as well as governmental entities to the provisions of the CRC become readily apparent. In some signatory nations, those doing the harm (for example, the Lord's Resistance Army in Central Africa) are not associated with the government, so NGOs need to be bound to the Convention as well and held accountable, just as the national governments are.<sup>287</sup>

### D. *Do More of What Works and Abandon What Doesn't*

Quite simply, signatories must recognize when to abandon certain policies and practices that are not effecting much change, and when to continue practices that are making a noticeable difference. This requires self-monitoring and self-assessment, yet plainly using logic and observing trends can be surprisingly effective.<sup>288</sup>

### E. *Put More Effort Into the Eradication of Poverty and Educating Locals*

Every one of the atrocities discussed in Section III of this Note are either directly or indirectly symptomatic of poverty and a lack of education.<sup>289</sup> When a child is poor, her parents are unable to support her and she is married to an older man at too young an age, which in turn forces her to quit school.<sup>290</sup> When a village is uneducated on a host of issues, from gender equality to health and hygiene, they perform FGM on

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<sup>286</sup> *Id.*

<sup>287</sup> See *A Brief Assessment*, *supra* note 5, at 335 (noting that NGOs are not bound by the CRC).

<sup>288</sup> *25th Anniversary of the Convention on the Rights of the Child: Questions and Answers*, HUMAN RIGHTS WATCH (Nov. 17, 2014), <http://www.hrw.org/news/2014/11/17/25th-anniversary-convention-rights-child>.

<sup>289</sup> See Eric Engle, *The Convention on the Rights of the Child*, 29 QUINNIPIAC L. REV. 793, 794–95 (2011) (noting that, in developing nations, poverty leads to abuses such as sexual exploitation, child soldiering, and trafficking).

<sup>290</sup> See Aliya Haider, *Adolescents Under International Law: Autonomy As the Key to Reproductive Health*, 14 WM. & MARY J. WOMEN & L. 605, 621–22 (2008); see also *A Brief Assessment*, *supra* note 5, at 335 (noting that child marriage has been advanced by parents as a way to escape poverty).

their girls because they are unknowingly mistaken about its benefits.<sup>291</sup> When a child is poor, he cannot go to school because his parents do not have the money to clothe him or buy him books.<sup>292</sup> When a mother is in debt, she may sell her own daughter into sex trafficking or child labor.<sup>293</sup>

Citizens of signatory nations, especially those living in remote and/or rural communities outside of or far from cities,<sup>294</sup> must be educated<sup>295</sup> on gender equality, health and hygiene, the risks of FGM, the importance of sending children to school, the risks and disadvantages of child marriage, the dangers and signs of sex trafficking, and violence and abuse of all kinds and how to report it.

Additionally, government and/or UN officials need to begin working with local officials and police in signatory nations to properly train and supervise them, as it is often local police who are complicit in and/or serve to aggravate atrocities against children in their jurisdictions.<sup>296</sup>

#### CONCLUSION

In sum, the United Nations Convention on the Rights of the Child would work perfectly if every country on Earth shared the same goals, every individual cared for others besides themselves, and all governments followed the rules, even without potential consequences. However, this world is still full of unspeakable horrors, international laws are often ineffective to cure them, and too many people choose not to, or cannot afford to work for the good of others unless they themselves can somehow benefit. In order to preserve the lives of children and effect real, visible change, the CRC must take these factors into consideration first and foremost. The Convention was written with the purpose of helping “the least of these,”<sup>297</sup> yet large numbers of the neediest children are currently living in some of the most unreachable places in the world. Because of this, the CRC must be adapted, implemented, and enforced in new and

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<sup>291</sup> *A Brief Assessment*, *supra* note 5, at 338; *FGM/Cutting*, *supra* note 192, at 15–20, 20 fig.3.2.

<sup>292</sup> *See State of the World’s Children*, *supra* note 131, at 17 (noting that one of the reasons children are deprived of an education is because their families cannot afford school fees).

<sup>293</sup> *Cf. McClain & Garrity*, *supra* note 133, at 233–34.

<sup>294</sup> Hedayat, *supra* note 117 (noting that, in India, where 40% of child marriages take place, the practice is typically supported by the entire community in remote villages).

<sup>295</sup> *See Ending Child Marriage*, *supra* note 150 (mentioning the importance of education for eradicating practices such as child marriage).

<sup>296</sup> *See e.g., Burkhalter*, *supra* note 139, at 122, 124 (noting the need for reform of local police and detailing stories of success that International Justice Mission has had in working with oft-corrupt local police and government officials to eradicate sex trafficking in certain countries).

<sup>297</sup> *Matthew 25:40* (New International).

different ways, or it has no hope of success. The UN's "top-down" approach will never work, as it started at the very beginning with ideals that are nearly impossible for even the most "enlightened" countries to attain.<sup>298</sup>

Currently, the CRC is a list of suggestions with no enforcement or consequences behind them, and no one is listening. In order to be effective, the UN must be realistic and start working from the bottom up.

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<sup>298</sup> See generally U.S. Dep't of State, *supra* note 126.