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Failing the Grade: How the Use of Corporal Punishment in U.S. Public Schools Demonstrates the Need for U.S. Ratification of the Children's Rights Convention and the Convention on the Rights of Persons with Disabilities

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Failing the Grade: How the Use of Corporal Punishment in U.S. Public Schools Demonstrates the Need for U.S. Ratification of the Children's Rights Convention and the Convention on the Rights of Persons with Disabilities

ABOUT THE AUTHORS: Alice Farmer is the Aryeh Neier Fellow with Human Rights Watch ("HRW") and the American Civil Liberties Union ("ACLU"). She is the primary author and researcher of two joint HRW/ACLU reports on corporal punishment in U.S. public schools. This article is based in part on the most recent data available at the time of publishing, collected for HRW/ACLU from 2007 through 2009. Some portions of this research was originally published in two joint reports: HUMAN RIGHTS WATCH & AMERICAN CIVIL LIBERTIES UNION, *A VIOLENT EDUCATION: CORPORAL PUNISHMENT OF CHILDREN IN U.S. PUBLIC SCHOOLS* (2008); HUMAN RIGHTS WATCH & AMERICAN CIVIL LIBERTIES UNION, *IMPAIRING EDUCATION: CORPORAL PUNISHMENT OF STUDENTS WITH DISABILITIES IN U.S. PUBLIC SCHOOLS* (2009). The views expressed here are the authors' own. Kate Stinson is a 2010 J.D. candidate at Columbia Law School and the Managing Editor of the *Columbia Human Rights Law Review*. She is a legal intern with the ACLU Human Rights Program.

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I. INTRODUCTION

Corporal punishment in schools is prohibited under international law,¹ yet it routinely occurs in U.S. public schools: Almost a quarter of a million children received corporal punishment in the 2006–2007 school year, and students with disabilities were physically punished at disproportionately high rates.² The United States has long proclaimed a commitment to children’s rights and has been a leader on developing disability rights laws. Furthermore, the U.S. is a party to or signatory to various treaties that prohibit corporal punishment. Yet children in various U.S. states are among some of the only children in the developed world who are subjected to this degrading form of punishment. The U.S. must provide better protection for its children by implementing its existing treaty obligations and ratifying and implementing additional treaties.

The U.S. is to be applauded for signing the Convention on the Rights of the Child (“CRC”) and the Convention on the Rights of Persons with Disabilities (“CRPD”),³ documents that in their object and purpose uphold the fundamental notion of human dignity. By fully ratifying these conventions, the U.S. would confirm its commitment to international norms that protect children from corporal punishment in public schools, protection that children in 108 countries already have. The U.S., though it sometimes takes an exceptionalist position on human rights issues,⁴ particularly with respect to domestic application of international norms,⁵ is nonetheless a party to

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1. See, e.g., Office of the U.N. High Comm’r for Human Rights, Comm. on the Rights of the Child, 42d Sess., Gen. Comment No. 8, *The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, Inter Alia)*, ¶ 18, U.N. Doc. CRC/C/GC/8 (Mar. 2, 2007); U.N. Office of the High Comm’r for Human Rights, Human Rights Comm., 44th Sess., Gen. Comment No. 20, *Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment of Punishment (Art. 7)*, ¶ 5, U.N. Doc. CCPR/C/GC/20 (Mar. 10, 1992); U.N. Comm. against Torture, *Report of the Committee against Torture*, ¶ 169, delivered to the General Assembly, U.N. Doc. A/50/44 (July 26, 1995).
 2. HUMAN RIGHTS WATCH & AMERICAN CIVIL LIBERTIES UNION, A VIOLENT EDUCATION: CORPORAL PUNISHMENT OF CHILDREN IN U.S. PUBLIC SCHOOLS 71–75 (2008), available at <http://www.hrw.org/en/node/62078/section/1> (citing U.S. DEPT. OF EDUC., OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION 2006, PROJECTED VALUES FOR THE NATION, <http://ocrdata.ed.gov/downloads/projections/2006/2006-nation-projection.xls> (last visited Mar. 18, 2010) [hereinafter OCR, CIVIL RIGHTS DATA COLLECTION 2006]).
 3. The U.S. signed the CRC on February 16, 1995. See United Nations Treaty Collection, Status of Treaties, CRC, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (last visited Mar. 18, 2010). The U.S. signed the CRPD on July 30, 2009. See United Nations Treaty Collection, Status of Treaties, CRPD, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en (last visited Mar. 18, 2010).
 4. Rosemary Foot, *Exceptionalism Again: The Bush Administration, The “Global War on Terror” and Human Rights*, 26 LAW & HIST. REV. 707, 707–09 (2008).
 5. Tara J. Melish, *From Paradox to Subsidiarity: The United States and Human Rights Treaty Bodies*, 34 YALE J. INT’L L. 389, 391 (2009).

conventions providing for the rights to physical integrity,⁶ human dignity,⁷ and education;⁸ and prohibiting cruel, inhuman, and degrading treatment.⁹ These rights underpin the current conviction that corporal punishment “has evolved to be considered a direct assault on the dignity of a person and therefore prohibited by international law.”¹⁰ By implementing existing treaty obligations and ratifying new ones, the U.S. can bring its laws and practices in line with the current state of international law.

U.S. law, which permits corporal punishment, fails to live up to these international standards protecting children from physical punishment in public schools. Corporal punishment remains legal in twenty U.S. states,¹¹ though there is an accelerating trend toward abolition both within the U.S.¹² and abroad.¹³ According to the most recent data available from the U.S. Department of Education, Office for Civil Rights (“OCR”), at least 220,000 public school students are subjected to corporal punishment

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6. See *infra* Part II.A.; see also Comm. on the Rights of the Child, 42d Sess., Gen. Comment No. 8, *supra* note 1, ¶ 21.
 7. See *infra* Part II.B.; see also Comm. on the Rights of the Child, 42d Sess., Gen. Comment No. 8, *supra* note 1, ¶ 21; U.N. Econ. & Soc. Council [ECOSOC], Comm. on Economic, Social and Cultural Rights, 21st Sess., Gen. Comment No. 13, *The Right to Education (Art. 13)*, ¶ 41, U.N. Doc. E/C.12/1999/10 (Dec. 8, 1999).
 8. See *infra* Part II.E.; see also G.A. Res. 44/25, ¶ 28, 29(1), U.N. Doc. A/RES/44/25 (Nov. 10, 1989); G.A. Res. 217A(III), ¶ 26, U.N. Doc. A/810 (Dec. 19, 1948).
 9. See *infra* Part II.C.; see also Human Rights Comm., 44th Sess., Gen. Comment No. 20, *supra* note 1, ¶ 5.
 10. U.N. Human Rights Council, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 35, U.N. Doc. A/HRC/10/44 (Jan. 14, 2009) (*prepared by* Manfred Nowak) [hereinafter Nowak Report].
 11. Corporal punishment is permitted in some form in Alabama, ALA. CODE § 16-28A-1 (1995); Arizona, ARIZ. REV. STAT. ANN. § 15-843(B)(2) (2009); Arkansas, ARK. CODE ANN. § 6-18-503(b)(1) (1995); Colorado, COLO. REV. STAT. § 22-32-109.1 (2009); Florida, FLA. STAT. § 1003.32 (2003); Georgia, GA. CODE ANN. §§ 20-2-730, 731 (1977); Idaho, IDAHO CODE ANN. § 33-1224 (1963); Indiana, IND. CODE § 31-34-1-15 (2008); Kansas, KAN. STAT. ANN. § 21-3609 (1995); Kentucky, KY. REV. STAT. ANN. § 503.110 (West 1982); Louisiana, LA. REV. STAT. ANN. § 17:223 (2001); Mississippi, MISS. CODE ANN. § 37-11-57 (1997); Missouri, MO. REV. STAT. § 160.261 (2008); New Mexico, N.M. STAT. § 22-5-4.3 (2005); North Carolina, N.C. GEN. STAT. § 115C-391 (2009); Oklahoma, OKLA. STAT. tit. 21, § 844 (2002); South Carolina, S.C. CODE ANN. § 59-63-260 (1976); Tennessee, TENN. CODE ANN. § 49-6-4103 (1979); Texas, TEX. PENAL CODE ANN. § 9.62 (Vernon 2003); and Wyoming, WYO. STAT. ANN. § 21-4-308 (1998). GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN, PROGRESS TOWARDS PROHIBITING ALL CORPORAL PUNISHMENT IN NORTH AMERICA (2009), available at <http://www.endcorporalpunishment.org/pages/progress/global.html> (scroll down and click on the “North America” link); see also *infra* Part III.A.
 12. While New Jersey banned corporal punishment by statute as early as 1867, many other states did not follow until the 1990s or 2000s, including most recently Ohio, where a ban on corporal punishment in schools was signed into law in July 2009. THE CENTER FOR EFFECTIVE DISCIPLINE, U.S.: CORPORAL PUNISHMENT AND PADDLING STATISTICS BY STATE AND RACE, STATES BANNING CORPORAL PUNISHMENT (2009), <http://www.stophitting.com/index.php?page=statesbanning> (last visited Mar. 18, 2010); THE CENTER FOR EFFECTIVE DISCIPLINE, THE OHIO SCHOOL CORPORAL PUNISHMENT LAW—A HISTORY (2009), <http://www.stophitting.com/index.php?page=howcorpwasbanned> (last visited Mar. 18, 2009).
 13. As of November 2009, 109 countries worldwide had banned corporal punishment in schools. See GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN, *supra* note 11.

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each school year.¹⁴ Corporal punishment is particularly pervasive in Mississippi, Arkansas, and Alabama, which have the highest percentages of physically punished students every year.¹⁵ The OCR data demonstrates that 49,197 students in Texas alone were corporally punished in the 2006–2007 school year, the absolute highest number in any state.¹⁶

Corporal punishment in the U.S. typically takes the form of “paddling”: an administrator or teacher hits a child repeatedly on the buttocks with a long wooden board, causing pain, humiliation, and in some cases deep bruising or other serious injuries.¹⁷ Students of all ages are punished in this way: HRW and the ACLU documented cases of corporal punishment against students ranging from pre-kindergarten to twelfth grade.¹⁸ Students can be punished for minor infractions such as chewing gum, talking back to a teacher, or violating the dress code, as well as for more serious transgressions such as fighting.¹⁹

Corporal punishment, in addition to violating human rights law, is an ineffective method of discipline. It can cause physical and psychological injury, damage the educational environment, and discourage students from learning.²⁰ Furthermore, it does not act as a sufficient deterrent for future misbehavior—at best providing a short-term deterrent, and at worst teaching students that violence is a legitimate response.²¹

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14. OCR, CIVIL RIGHTS DATA COLLECTION 2006, *supra* note 2. The OCR has been conducting a biennial survey of the nation’s public elementary and secondary schools since 1968. U.S. DEPT. OF EDUC., OFFICE FOR CIVIL RIGHTS, ABOUT THE CIVIL RIGHTS DATA COLLECTION (CRDC) (2009), http://ocrdata.ed.gov/downloads/About_the_data_v3-cb.doc (last visited Mar. 18, 2010). The Civil Rights Data Collection is conducted pursuant to 34 C.F.R. § 100.6(b) of the Department of Education regulation implementing Title VI of the Civil Rights Act of 1964. *Id.* Information is collected on enrollment and discipline, among other topics, by race and by gender. The data collection is a rolling stratified sample of approximately 6000 districts and 60,000 schools within those districts, which facilitates state and national projections of data. *See id.* The 2006 Civil Rights Data Collection contains information on 5929 public school districts and 62,484 schools in those school districts, and provides information reflecting the 2006–2007 school year. *See id.*; OCR, CIVIL RIGHTS DATA COLLECTION 2006, *supra* note 2; Telephone Interview with an official who chose to remain anonymous, U.S. Dept. of Educ. (Apr. 15, 2008) (on file with authors).
 15. U.S. DEPT. OF EDUC., OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION 2006, 2006 NATIONAL AND STATE PROJECTIONS, http://ocrdata.ed.gov/Projections_2006.aspx (select various states) (last visited Mar. 18, 2010). Seven and a half percent of public school children in Mississippi, 4.7% in Arkansas, and 4.5% in Alabama, are paddled every year. *Id.*
 16. U.S. DEPT. OF EDUC., OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION 2006, PROJECTED VALUES FOR THE STATE OF TEXAS, <http://ocrdata.ed.gov/downloads/projections/2006/2006-texas-projection.xls> (last visited Mar. 18, 2010).
 17. A VIOLENT EDUCATION, *supra* note 2, at 14–20, 50–60; HUMAN RIGHTS WATCH & AMERICAN CIVIL LIBERTIES UNION, IMPAIRING EDUCATION: CORPORAL PUNISHMENT OF STUDENTS WITH DISABILITIES IN U.S. PUBLIC SCHOOLS 15–18, 41–48 (2009), *available at* <http://www.aclu.org/pdfs/humanrights/impairingeducation.pdf>.
 18. A VIOLENT EDUCATION, *supra* note 2, at 48.
 19. *Id.* at 35–42.
 20. *Id.* at 50–60.
 21. *Id.* at 64–68.

Moreover, African American students and students with mental or physical disabilities are corporally punished at disproportionately high rates, creating a hostile environment in which these students may struggle to succeed.²² African-American students make up 17.1% of the nationwide student population, but 35.6% of those paddled.²³ While girls as a group are paddled less than boys, in the thirteen states that use paddling most heavily, African American girls are paddled at more than twice the rate of white girls.²⁴ Students with disabilities are also more likely to receive corporal punishment: “In Tennessee, for example, students with disabilities are punished at more than twice the rate of the general student population.”²⁵

Corporal punishment violates the rights of any child subjected to the punishment and creates barriers to effective education. For students with disabilities, however, these effects can be magnified. Students with disabilities can be physically punished for conduct related to their conditions.²⁶ Students with autism, for example, can be punished for behaviors common to autism, such as rocking from side to side.²⁷ In some cases, students with disabilities may see their underlying conditions worsened as a result of physical punishment.²⁸ When students with disabilities are beaten for their conditions, their rights to education are further violated.²⁹

Corporal punishment in public schools amounts to a violation of children’s rights norms to which the U.S. has demonstrated a long-standing commitment and by which the U.S. is bound through its existing treaty obligations. Corporal punishment is contrary to respect for human dignity, a deep-seated guiding principle of human rights law enshrined in the Universal Declaration of Human Rights.³⁰ The discipline technique is contrary to human rights to freedom from cruel, inhuman, and degrading treatment or punishment, and freedom from physical violence.³¹ As used in the U.S., it violates the prohibition on discrimination and impinges on children’s right to education.³² Many of the major human rights treaty bodies, including the United

22. *Id.* at 71–75.

23. *Id.* at 72 (citing OCR, CIVIL RIGHTS DATA COLLECTION 2006, *supra* note 2).

24. *Id.* at 73.

25. IMPAIRING EDUCATION, *supra* note 17, at 6.

26. *Id.* at 35–37.

27. *Id.* at 37–40.

28. *Id.* at 44–47.

29. *Id.* at 61–62.

30. See Universal Declaration of Human Rights, G.A. Res. 217A(III), at 71, U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc. A/810 (Dec. 10, 1948), available at <http://www.un.org/en/documents/udhr/> [hereinafter UDHR, G.A. Res. 217A(III)] (“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world . . .”); see also *infra* Part II.B.

31. See *infra* Parts II.C., II.D.

32. For instance, Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”), to which the U.S. is party, requires the U.S. to protect the right of everyone to protection by the state against violence or bodily harm, and to guarantee non-discrimination in access

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Nations Human Rights Committee, the U.N. Committee against Torture, and the U.N. Committee on the Rights of the Child, have delineated provisions of international law that prohibit corporal punishment in schools.³³

The U.S. recently signed the CRPD and has also signed the CRC.³⁴ By ratifying and implementing these treaties, the U.S. can strengthen protection for schoolchildren. The CRPD, for instance, provides additional protection against corporal punishment for students with disabilities. The CRPD, which entered into force in May 2008, provides for the right to an inclusive education, protects children with disabilities from violence and abuse, and prohibits discrimination on the basis of disability. In signing the CRPD, President Obama stated that the treaty “reaffirms the inherent dignity and worth and independence of all persons with disabilities”³⁵ The U.S. should now adhere to these commitments and proceed to full ratification of the CRC and the CRPD in order to ensure that students with and without disabilities receive the appropriate education.

This article argues that corporal punishment is prohibited by international human rights norms that are binding upon the U.S. The next section—Part II—examines these norms. First, we establish that in addition to guaranteeing the same basic human rights afforded to adults, international law provides special protection for children in recognition of their unique needs and vulnerabilities. These special measures indicate governmental responsibility to take extra steps to ensure that children are adequately protected. Second, we show that corporal punishment is incompatible with the inherent dignity of the child and violates the fundamental principle of protecting individual dignity that animates the vast body of human rights law. Third, we examine arguments establishing that corporal punishment can rise to the level of cruel, inhuman, and degrading treatment, and can thus violate a child’s right to freedom from such treatment as articulated in both the International Covenant on Civil and Political Rights (“ICCPR”) and the Convention against

to education and training. See International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), Annex, art. 5, U.N. GAOR, 20th Sess., U.N. Doc. A/6014 (Dec. 21, 1965) [hereinafter ICERD, G.A. Res. 2106 (XX)]. The disproportionate rates of corporal punishment among students of color deny these students equal access to education and violates U.S. treaty obligations.

33. Comm. on the Rights of the Child, 42d Sess., Gen. Comment No. 8, *supra* note 1; Human Rights Comm., 44th Sess., Gen. Comment No. 20, *supra* note 1; U.N. Comm. against Torture, *Report of the Committee against Torture*, *supra* note 1.
34. The U.S., as signatory to these treaties, is bound to comport with their object and purpose, even prior to full ratification. Vienna Convention on the Law of Treaties, art. 18, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679 (*entered into force* Jan. 27, 1980) [hereinafter Vienna Convention]. Although the U.S. has signed but not ratified the Vienna Convention on the Law of Treaties, it regards this convention as “the authoritative guide to current treaty law and practice.” See *Vienna Convention on the Law of Treaties Transmitted to the Senate*, 65 DEP’T ST. BULL. 684, 685 (1971).
35. Barack Obama, U.S. President, Remarks by the President on Signing of U.N. Convention on the Rights of Persons with Disabilities Proclamation (July 24, 2009), *available at* http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-on-Rights-of-Persons-with-Disabilities-Proclamation-Signing.

Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (“CAT” or “Convention against Torture”), treaties to which the U.S. is a party.

Fourth, we show that various international instruments binding on the U.S. protect children’s right to freedom from any form of physical violence. While the Committee on the Rights of the Child recognizes that, in exceptional circumstances, reasonable use of force may be necessary to protect a child, it also notes that the use of force to punish is never acceptable and corporal punishment violates a child’s right to be free from physical violence.

Fifth, we demonstrate that because corporal punishment creates significant barriers to success at school, it infringes upon a child’s right to education. This right is expressly articulated in both the CRC and the CRPD. The U.S. has signed both of these conventions and must therefore abide by their object and purpose. Sixth, we establish that the U.S. is bound by the principle of non-discrimination—a fundamental principle of human rights law.

Part III of this article examines U.S. law, noting ways in which it is incompatible with binding international human rights norms. First, we examine federal and state law on corporal punishment. We demonstrate that federal law fails to live up to international standards protecting children from corporal punishment. In particular, the failure to extend the Eighth Amendment’s prohibition on cruel and unusual punishment³⁶ to corporal punishment in public schools is incompatible with the U.S.’s international obligations. In further violation of the U.S.’s international obligations, various U.S. states have authorized the practice of corporal punishment through legislation and shielded those administering the physical punishment with legal immunity.

Finally, we establish that both federal and state governments are bound to uphold human rights treaties made under the authority of the U.S. As a party to the ICCPR, the CAT, and the ICERD, the U.S. is legally bound by the rights articulated therein; moreover, the U.S. must uphold the object and purpose of both the CRC and the CRPD as a signatory of both treaties. Corporal punishment in U.S. public schools is incompatible with these international obligations.

U.S. children deserve safe, effective school environments in which every child can maximize his or her academic potential. Corporal punishment violates human rights, can lead to physical and psychological injury, and has a deleterious effect on the learning environment. The U.S. must bring its school discipline policies in line with binding international human rights law protecting children from corporal punishment. By ratifying the CRC and the CRPD, and by implementing these treaties in addition to its current treaty obligations under ICERD, ICCPR, and CAT, the U.S. can move toward taking all necessary steps to replace corporal punishment with effective discipline systems in schools so that children’s rights are protected.

36. U.S. CONST. amend. VIII.

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II. INTERNATIONAL HUMAN RIGHTS LAW PROHIBITING CORPORAL PUNISHMENT IN PUBLIC SCHOOLS

Corporal punishment in U.S. public schools is incompatible with international human rights laws binding on the U.S. Corporal punishment violates internationally recognized human rights to freedom from cruel, inhuman, and degrading treatment or punishment, and freedom from physical violence. In many instances, it violates the prohibition on discrimination and impinges on children's right to education. Corporal punishment is fundamentally incompatible with respect for human dignity, a deep-seated guiding principle of international human rights law enshrined in the Universal Declaration of Human Rights.³⁷

The prohibition on corporal punishment is derived from many of the major human rights treaties, including the ICCPR, the Convention against Torture, both of which the U.S. has ratified, and the CRC, which the U.S. has signed.³⁸ Numerous international and regional human rights institutions, including the Committee on the Rights of the Child, the U.N. Human Rights Committee, and the Committee against Torture, have spoken out against corporal punishment in schools.³⁹ Furthermore, the ICERD mandates that States Parties, including the U.S., protect individuals from violence by the government⁴⁰ and ensure non-discriminatory access to education.⁴¹

Students with disabilities are further protected from corporal punishment by international law specific to persons with disabilities, in addition to receiving the general protections available to all children. These protections are strongly articulated in the CRPD, which entered into force on May 3, 2008,⁴² and which was signed by the U.S. on July 30, 2009.⁴³ As signatory to the CRPD, as well as to the CRC, the

37. UDHR, G.A. Res. 217A(III), *supra* note 30 (“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world . . .”); *see also infra* Part II.B.

38. The U.S. signed the ICCPR on October 5, 1977 and ratified it on June 8, 1992. *See* United Nations Treaty Collection, Status of Ratifications, ICCPR, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-4&chapter=4&lang=en (last visited Mar. 18, 2010). It signed the CAT on April 18, 1988 and ratified it on October 21, 1994. United Nations Treaty Collection, Status of Ratifications, CAT, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-9&chapter=4&lang=en (last visited Mar. 18, 2010). The U.S. signed the CRC on February 15, 1995, but it has not yet ratified the Convention. United Nations Treaty Collection, Status of Ratifications, CRC, *supra* note 3.

39. *See* Comm. on the Rights of the Child, 42d Sess., Gen. Comment No. 8, *supra* note 1, ¶ 18; Human Rights Comm., 44th Sess., Gen. Comment No. 20, *supra* note 1; U.N. Comm. against Torture, *Report of the Committee against Torture*, *supra* note 1.

40. ICERD, G.A. Res. 2106 (XX), *supra* note 32, art. 5(b).

41. *Id.* art. 5(e)(v).

42. The Secretary-General, *Status of the Convention on the Rights of Persons with Disabilities and the Optional Protocol Thereto*, ¶ 2, *delivered to the General Assembly*, U.N. Doc. A/63/264 (Aug. 11, 2008).

43. United Nations Treaty Collection, Status of Treaties, CRPD, *supra* note 3.

U.S. is obliged to uphold the object and purpose of these treaties.⁴⁴ Corporal punishment violates provisions protecting people with disabilities from violence and abuse, in addition to cruel, inhuman, and degrading treatment. When applied at disproportionate rates—as in the U.S.—corporal punishment violates the right to non-discrimination of students with disabilities. In addition, corporal punishment can impinge on these students' right to an inclusive education.

A. Special Measures of Protection for Children under International Human Rights Law

Children, in light of their unique needs and vulnerabilities, are entitled to special protections under international human rights law.⁴⁵ In light of this legal standing, the U.S. should proceed to full ratification of the CRC and the CRPD to ensure that school children in this country receive the protection they deserve. Children have, with a handful of exceptions, the same human rights as adults. Even before these major human rights treaties were drafted, governments, including prominently the U.S., acknowledged that children have additional needs and vulnerabilities and that government institutions, including schools, have a responsibility to protect them.

The U.S. has, for decades, played a role in developing international law that guarantees special measures of protection for children. For instance, in November 1959, the United Nations General Assembly adopted the Declaration on the Rights of the Child, which states that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”⁴⁶ The U.S., along with the other seventy-seven members of the U.N. General Assembly at the time, voted unanimously to adopt the declaration.⁴⁷ Since that time, the U.S., along with nearly all other governments,

44. See *supra* note 34 and accompanying text. The U.S. government has also accepted that it is bound by customary international law not to defeat a treaty's object and purpose. See Bill Gertz, *Albright Says U.S. Bound by Nuke Pact: Sends Letters to Nations Despite Senate Vote*, WASH. TIMES, Nov. 2, 1999, at A1 (describing the Clinton administration's acceptance of obligations under the Comprehensive Test Ban Treaty despite the Senate's failure to ratify).

45. The Committee on the Rights of the Child explains that it is children's vulnerability that necessitates this special protection: “The distinct nature of children, their initial dependent and developmental state, their unique human potential as well as their vulnerability, all demand the need for more, rather than less, legal and other protection from all forms of violence.” Comm. on the Rights of the Child, 42d Sess., Gen. Comment No. 8, *supra* note 1, ¶ 21.

46. Declaration of the Rights of the Child, G.A. Res. 1386 (XIV), at 19, U.N. GAOR, 14th Sess., U.N. Doc. A/4354 (Nov. 20, 1959) [hereinafter DRC, G.A. Res. 1386 (XIV)]. Similarly, article 19 of the American Convention on Human Rights states that “[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.” American Convention on Human Rights (“Pact of San José, Costa Rica”) art. 19, *adopted* Nov. 22, 1969, O.A.S. T. S. No. 36, 1144 U.N.T.S. 123 (*entered into force* July 18, 1978), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1, at 25 (1992).

47. While U.N. General Assembly resolutions do not in and of themselves constitute binding international law, passage of resolutions by unanimous consent is strong authority for asserting their status as customary international law. See Stephen Schwebel, *The Effect of Resolutions of the U.N. General Assembly on Customary International Law*, 73 AM. SOC'Y INT'L L. PROC. 301 (1979).

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have further elaborated on the specific rights of children, including rights in educational settings. Children with disabilities are doubly vulnerable—by virtue of age and of disability—and human rights law has developed to reflect that extra need for protection. International instruments provide this special protection by embracing two distinct yet interrelated principles: special protection of all minor children under international law and a prohibition of discrimination on the basis of disability.

The CRC is the most comprehensive document on the rights of children; it delineates the notion of special protection seen throughout international law. It is children's vulnerability that necessitates this special protection. As noted by the Committee on the Rights of the Child: "The distinct nature of children, their initial dependent and developmental state, their unique human potential as well as their vulnerability, all demand the need for more, rather than less, legal and other protection from all forms of violence."⁴⁸ The CRC also details the special capacity of children to learn from their mistakes and rehabilitate themselves.⁴⁹

The provision of extra legal protection is also seen in other instruments. The ICCPR, for example, contains general provisions from which children are entitled to benefit and also includes an article that is specifically devoted to children: Article 24 stipulates that "[e]very child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State."⁵⁰

The Declaration on the Rights of the Child notes that in the enactment of laws to provide special protection for children, "the best interests of the child shall be the paramount consideration."⁵¹ Likewise, the CRC mandates that "[i]n all actions concerning children . . . the best interests of the child shall be a primary consideration."⁵² According to the Committee on the Rights of the Child, this means that "facilities that provide services for children with disabilities . . . should have the safety, protection and care of children as their primary consideration . . ."⁵³ Corporal punishment in schools is never in the best interests of children with disabilities, or of any children. Corporal punishment creates a violent and fearful environment in the

48. Comm. on the Rights of the Child, 42d Sess., Gen. Comment No. 8, *supra* note 1, ¶ 21.

49. Convention on the Rights of the Child, G.A. Res. 44/25, art. 23, U.N. GAOR, 44th Sess., 61st plen. mtg., U.N. Doc. A/RES/44/25 (Nov. 20, 1989), *available at* <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/547/84/IMG/NR054784.pdf?OpenElement> [hereinafter CRC, G.A. Res. 44/25].

50. International Covenant on Civil and Political Rights art. 24, *adopted* Dec. 16, 1966, G.A. Res. 2200A (XXI), at 52, U.N. GAOR, 21st Sess., U.N. Doc. A/6316 (Dec. 20, 1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976) [hereinafter ICCPR, G.A. Res. 2200A (XXI)]. The ICCPR was ratified by the U.S. on June 8, 1992.

51. DRC, G.A. Res. 1386 (XIV), *supra* note 46, princ. 2.

52. CRC, G.A. Res. 44/25, *supra* note 49, art. 3(1).

53. See Office of the U.N. High Comm'r for Human Rights, Comm. on the Rights of the Child, 43d Sess., Gen. Comment No. 9, *The Right of the Children with Disabilities*, ¶ 30, U.N. Doc. CRC/C/GC/9 (Feb. 27, 2007).

classroom, which is wholly incompatible with a primary goal of education “to provide the child with the empowering experience of control, achievement, and success”⁵⁴

Both age and disability can result in vulnerability requiring special legal protection. The Declaration on the Rights of the Child, in addition to noting that “[t]he child shall enjoy special protection,”⁵⁵ requires that “[t]he child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.”⁵⁶ The CRC also recognizes the “right of the disabled child to special care,”⁵⁷ and the Committee on the Rights of the Child (the body empowered to issue authoritative interpretations of the Convention) has recognized that children with disabilities are more vulnerable to violence, abuse, and neglect in all settings, including schools.⁵⁸

Because children with disabilities suffer from a double vulnerability based on their age and disability, developing international legal standards require that governments take extra measures to ensure their protection. The CRPD contains a number of specific provisions on children. Article 7, which is entirely devoted to children with disabilities, prescribes that States Parties are to take all necessary measures to ensure the children’s full enjoyment “of all human rights and fundamental freedoms on an equal basis with other children,” and the “best interests of the child” are to be “a primary consideration” “in all actions concerning children”⁵⁹ The Convention also stipulates that States Parties must “take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring . . . age-sensitive assistance and support for persons with disabilities and their families and caregivers” as well as protection services that are age sensitive.⁶⁰

The special protection provided under international human rights law to children—and to children with disabilities in particular—indicates governmental responsibility to take extra measures to ensure their protection. The best interests of children with disabilities require that governments not only take such extra measures to ensure their protection, but also take into account their doubly vulnerable status when determining policies aimed towards that end. The rights enumerated below—which in combination amount to a prohibition on the use of corporal punishment—must be enforced with special attention paid to the needs of children.

54. *See id.* ¶ 64.

55. DRC, G.A. Res. 1386 (XIV), *supra* note 46, princ. 2.

56. *Id.* princ. 5.

57. CRC, G.A. Res. 44/25, *supra* note 49, art. 23(2).

58. Comm. on the Rights of the Child, 43d Sess., Gen. Comment No. 9, *supra* note 53, ¶ 42.

59. *See* Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, art. 7, U.N. GAOR, 61st Sess., U.N. Doc. A/RES/61/106 (Jan. 24, 2007) [hereinafter CRPD, G.A. Res. 61/106].

60. CRPD, G.A. Res. 61/106, *supra* note 59, art. 16(2).

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B. Corporal Punishment Is Incompatible with the Inherent Dignity of the Child

Protecting the dignity of each and every individual is the fundamental guiding principle of international human rights law. Corporal punishment violates children's right to human dignity. This right is found in the preamble to the Universal Declaration of Human Rights and in many other legal documents to which the U.S. is a party.⁶¹ Manfred Nowak, the U.N. Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, observes that corporal punishment "has evolved to be considered a direct assault on the dignity of a person and therefore prohibited by international law."⁶² This international prohibition of corporal punishment has been expressly articulated by treaty monitoring bodies, reaffirming the prime importance of protecting the fundamental right to human dignity codified in various international mechanisms.

With respect to a child's right to education, article 28 of the CRC requires that States Parties "take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity"⁶³ In General Comment No. 8, the Committee on the Rights of the Child discussed article 28 and the right of the child to be free from corporal punishment.⁶⁴ The Committee expressly delineated a prohibition on corporal punishment, noting that it "directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity."⁶⁵ The CRC is the most widely ratified international human rights treaty,⁶⁶ and of the 193 States Parties,⁶⁷ only Singapore

61. See, e.g., UDHR, G.A. Res. 217A(III), *supra* note 30, pmb1. ("Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world . . .").

62. See Nowak Report, *supra* note 7, ¶ 35.

63. CRC, G.A. Res. 44/25, *supra* note 49, art. 28.

64. See Comm. on the Rights of the Child, 42d Sess., Gen. Comment No. 8, *supra* note 1. General comments are considered authoritative interpretations of a treaty. Cf. NIGEL D. WHITE, THE UNITED NATIONS SYSTEM: TOWARDS INTERNATIONAL JUSTICE 178 (2002) (noting that "the decisions and views of the HRC are the most authoritative interpretation of its provisions.").

65. See Comm. on the Rights of the Child, 42d Sess., Gen. Comment No. 8, *supra* note 1, ¶ 21. The Committee defined corporal punishment broadly to include "any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light;" it notes that most punishment "involves hitting ('smacking', 'slapping', 'spanking') children, with the hand or with an implement—a whip, stick, belt, shoe, wooden spoon, etc." *Id.* ¶ 11. This definition encompasses all known forms of corporal punishment currently used in U.S. public schools.

66. LUISA BLANCHFIELD, CONGRESSIONAL RESEARCH SERVICE, THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: BACKGROUND AND POLICY ISSUES 1 (2009), available at <http://fpc.state.gov/documents/organization/134266.pdf>.

67. United Nations Treaty Collection, Status of Treaties, CRC, *supra* note 3. As of March 2010, there were 193 States Parties to the CRC. There are only two nations worldwide who have signed the CRC but have failed to ratify it: the U.S. and Somalia. *Id.*

has issued a declaration on the use of corporal punishment in the context of its obligations under the CRC.⁶⁸

The incompatibility of corporal punishment with human dignity is echoed by the Committee on Economic, Social and Cultural rights (the treaty body that oversees the International Covenant on Economic, Social and Cultural Rights (“ICESCR”). Discussing the right to education in its General Comment No. 13, the Committee explained that “corporal punishment is inconsistent with the fundamental guiding principle of international human rights law . . . the dignity of the individual.”⁶⁹

The right to human dignity is a fundamental principle of human rights that is enshrined in numerous international human rights treaties.⁷⁰ Corporal punishment is incompatible with respect for the dignity of a child, and it violates numerous international legal documents including ICCPR, ICERD, and CAT—treaties ratified by the U.S. that constitute legally binding obligations.⁷¹ Moreover, the U.S.

68. *See id.* Singapore’s declaration reads:

The Republic of Singapore considers that articles 19 and 37 of the Convention do not prohibit—(a) the application of any prevailing measures prescribed by law for maintaining law and order in the Republic of Singapore; (b) measures and restrictions which are prescribed by law and which are necessary in the interests of national security, public safety, public order, the protection of public health or the protection of the rights and freedom of others; or (c) the judicious application of corporal punishment in the best interest of the child.

Id. A number of states have interpreted Singapore’s declaration as a reservation and objected to it as contrary to the object and purpose of the Convention. *See, e.g.*, CRC, *adopted* Nov. 20, 1989, 1934 U.N.T.S. 383 (Germany registered its objection to Singapore’s reservations on Sept. 4, 1996); CRC, *adopted* Nov. 20, 1989, 1935 U.N.T.S. 449 (Belgium registered its objection to Singapore’s reservations on Sept. 26, 1996); CRC, *adopted* Nov. 20, 1989, 1936 U.N.T.S. 369 (Italy registered its objection to Singapore’s reservations on Oct. 4, 1996); CRC, *adopted* Nov. 20, 1989, 1946 U.N.T.S. 350 (Netherlands registered its objection to Singapore’s reservations on Nov. 6, 1996); CRC, *adopted* Nov. 20, 1989, 1949 U.N.T.S. 387 (Norway registered its objection to Singapore’s reservations on Nov. 29, 1996); CRC, *adopted* Nov. 20, 1989, 1948 U.N.T.S. 433 (Finland registered its objection to Singapore’s reservations on Nov. 26, 1996); CRC, *adopted* Nov. 20, 1989, 1949 U.N.T.S. 388 (Portugal registered its objection to Singapore’s reservations on Dec. 3, 1996).

69. ECOSOC, Comm. on Econ., Soc. and Cultural Rights, 21st Sess., General Comm. No. 13, *Implementation of the International Covenant on Economic, Social and Cultural Rights*, ¶ 41, U.N. Doc. E/C.12/1999/10 (Dec. 10, 1999).

70. *See, e.g.*, UDHR, G.A. Res. 217A(III), *supra* note 30, pmbl. (“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world . . .”); CRC, G.A. Res. 44/25, *supra* note 49, pmbl. (reaffirming “faith in fundamental human rights and in the dignity and worth of the human person”); Convention on the Elimination of All Forms of Discrimination against Women intro., *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13 (*entered into force* Sept. 3, 1989) [hereinafter CEDAW] (noting that the spirit of the Convention is rooted in the goals of “reaffirm[ing] faith in fundamental human rights, [and] in the dignity, and worth of the human person”).

71. *See* ICCPR, G.A. Res. 2200A (XXI), *supra* note 50, pmbl. (“[r]ecognizing that these rights derive from the inherent dignity of the human person.”); ICERD, G.A. Res. 2106 (XX), *supra* note 32, pmbl. (affirming the necessity of “securing understanding of and respect for the dignity of the human person”); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, pmbl., U.N. GAOR, 39th Sess., 93rd plen. mtg., U.N. Doc. A/39/51 (Dec. 10, 1984) [hereinafter CAT, G.A. Res. 39/46] (recognizing the “equal and inalienable rights of all members of the

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has recently reaffirmed its commitment to respect the inherent dignity of all persons through its signing of the CRPD. As a signatory of the Convention, the U.S. is bound to not violate its object and purpose. The CRPD “recognize[s] the inherent dignity and worth and the equal and inalienable rights of all members of the human family,”⁷² and its express purpose includes “promot[ing] respect for the[] inherent dignity” of persons with disabilities.⁷³ The use of corporal punishment against any child fundamentally undermines this recent commitment made by the U.S., in addition to undermining its other international human rights obligations.

C. Corporal Punishment Can Violate the Right to Freedom from Cruel, Inhuman, and Degrading Treatment

Corporal punishment is incompatible with provisions in international human rights law prohibiting the use of cruel, inhuman, or degrading treatment or punishment. The U.S. is specifically bound by such provisions in treaties that it has fully ratified, such as the Convention against Torture and the ICCPR. Furthermore, the U.S. has signed, and should now ratify, the CRC and the CRPD, both of which also contain provisions prohibiting the use of cruel, inhuman, and degrading treatment, and both of which would offer additional, much-needed protection to U.S. children.

Treaty bodies that monitor these conventions and offer authoritative interpretations have repeatedly emphasized that corporal punishment is incompatible with provisions prohibiting the use of cruel, inhuman, or degrading treatment or punishment. The Convention against Torture and the ICCPR explicitly prohibit cruel, inhuman, or degrading treatment.⁷⁴ The U.S., as party to these treaties, is bound to follow statements issued by the treaty bodies.⁷⁵ The Committee on the Rights of the Child, in issuing the authoritative comment on the international prohibition of the use of corporal punishment in schools, emphasizes that corporal punishment is a form of cruel, inhuman, and degrading treatment.⁷⁶

Children in the U.S. are protected by article 7 of the ICCPR, which states that “[n]o one shall be subjected to . . . cruel, inhuman or degrading treatment or punishment.”⁷⁷ The Human Rights Committee (“HRC”), which offers the authoritative interpretation of the ICCPR, issued a General Comment on the scope

human family” that “derive from the inherent dignity of the human person”). The Convention Against Torture was entered into force on June 26, 1987 and ratified by the U.S. on October 21, 1994.

72. CRPD, G.A. Res. 61/106, *supra* note 59, pmb. (a).

73. *Id.* art. 1.

74. See ICCPR, G.A. Res. 2200A (XXI), *supra* note 50; CAT, G.A. Res. 39/46, *supra* note 71.

75. PHILIP ALSTON & JAMES CRAWFORD, THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING 258–59 (2000) (noting that “general comments, comments, and views of the committees carry great weight for [the] interpretation” of treaties).

76. See Comm. on the Rights of the Child, 42d Sess., Gen. Comment No. 8, *supra* note 1.

77. ICCPR, G.A. Res. 2200A (XXI), *supra* note 50, art. 7.

of article 7, concluding that this “prohibition must extend to corporal punishment, including excessive chastisement ordered . . . as an educative or disciplinary measure.”⁷⁸ The HRC emphasized that “article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.”⁷⁹ In its concluding observations to states, the HRC has repeatedly mandated that governments should abolish corporal punishment in schools.⁸⁰ The U.S., as a State Party to the ICCPR, is bound to follow the HRC’s interpretation of the treaty.⁸¹

The U.S. is also bound by its obligations under the Convention against Torture, which further prohibits some corporal punishment. According to article 16, the U.S. government is obliged to undertake to prevent acts of cruel, inhuman, or degrading treatment or punishment.⁸² The Committee against Torture declared that the “continuing application” of corporal punishment “could constitute in itself a violation of the Convention.”⁸³

The prohibition on cruel, inhuman, and degrading treatment found in CAT and ICCPR obliges the U.S. to protect children from corporal punishment. Manfred Nowak, the U.N. Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, emphasizes:

Since corporal punishment in all its forms . . . whether imposed by State authorities or by private actors, including schools and parents, has been qualified by all relevant intergovernmental human rights monitoring bodies as cruel, inhuman or degrading punishment, it follows that, under present international law, *corporal punishment can no longer be justified*, not even under the most exceptional situations.⁸⁴

Children with disabilities are entitled to additional protection against cruel, inhuman, and degrading treatment through the CRPD, which in article 15 guarantees that all persons with disabilities shall be free from torture or cruel, inhuman, or degrading treatment or punishment.⁸⁵ This provision contains particularly strong language, requiring that States Parties “take all effective *legislative, administrative,*

78. See Human Rights Comm., 44th Sess., Gen. Comment No. 20, *supra* note 1.

79. *Id.*

80. See, e.g., U.N. Office of the High Comm’r for Human Rights, Human Rights Comm., 53d Sess., *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Comments of the Human Rights Committee: United Kingdom of Great Britain and Northern Ireland*, §§ 4, 5, U.N. Doc. CCPR/C/79/Add.55 (July 27, 1995); U.N. Office of the High Comm’r for Human Rights, Human Rights Comm., 83d Sess., *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee: Greece*, ¶ 16, U.N. Doc. CCPR/CO/83/GRC (Apr. 25, 2005).

81. See WHITE, *supra* note 64.

82. CAT, G.A. Res. 39/46, *supra* note 71, art. 16.

83. U.N. Comm. against Torture, *Report of the Committee against Torture*, *supra* note 1, ¶ 169.

84. See Nowak Report, *supra* note 7, ¶ 37 (emphasis added).

85. See CRC, G.A. Res. 44/25, *supra* note 59, art. 15.

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judicial, or other measures”⁸⁶ to protect persons with disabilities from being subjected to such treatment. This language emphasizes the notion that all state actors, including public schools, must protect people with disabilities from such treatment. This responsibility on the part of state actors advances the purpose of the Convention, which is delineated in the first article: “to promote, protect and ensure the full and equal enjoyment of all human rights . . . by all persons with disabilities, and to promote respect for their inherent dignity.”⁸⁷ As a signatory of the Convention, the U.S. is bound by its object and purpose, and must therefore act accordingly to protect persons with disabilities from cruel, inhuman, and degrading treatment.⁸⁸

D. Freedom from Physical Violence

Children have the right to be free from any form of physical violence. This right is upheld by numerous international instruments that are legally binding on the U.S. Article 9 of the ICCPR, for instance, guarantees “[e]veryone [] the right to liberty and security of person.”⁸⁹ Similarly, article 5(b) of the ICERD provides that all individuals, without discrimination, have “[t]he right to security of person and protection by the State against violence or bodily harm”⁹⁰

A child’s right to be free from any form of mental or physical violence is expressly recognized in the CRC.⁹¹ Article 19 mandates that States “take all appropriate legislative, administrative, social and educational measures to protect the child from *all forms of physical or mental violence, injury or abuse*”⁹² The Committee on the Rights of the Child has explained in its General Comment No. 8 that this provision “does not leave room for any level of legalized violence against children” and that “[c]orporal punishment and other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them.”⁹³

The Committee’s General Comments constitute “the most authoritative interpretation”⁹⁴ of the CRC’s provisions and “represent an important body of experience in considering matters from the angle of the . . . treaty.”⁹⁵ The U.S. and

86. *See id.* (emphasis added).

87. *See id.* art. 1.

88. The U.S. signed the CRPD on July 30, 2009. United Nations Treaty Collection, Status of Treaties, CRPD, *supra* note 3. As a signatory, it is bound to abide by the treaty’s object and purpose. *See supra* note 34 and accompanying text.

89. ICCPR, G.A. Res. 2200A (XXI), *supra* note 50, art. 9.

90. *See* ICERD, G.A. Res. 2106 (XX), *supra* note 32, art. 5(b).

91. *See* CRC, G.A. Res. 44/25, *supra* note 49, art. 19.

92. *Id.* (emphasis added).

93. *See* Comm. on the Rights of the Child, 42d Sess., Gen. Comment No. 8, *supra* note 1, ¶ 18.

94. *See* WHITE, *supra* note 64.

95. Kerstin Mechlem, *Treaty Bodies and the Interpretation of Human Rights*, 42 VAND. J. TRANSNAT’L L. 905, 929 (2009).

Somalia are the only two countries that have failed to ratify the CRC.⁹⁶ The U.S. is nonetheless a signatory and is therefore bound not to violate the treaty's object and purpose.⁹⁷ Accordingly, the U.S. should look to the Committee's General Comments for appropriate guidance.

Moreover, the right of children with disabilities to be free from violence and abuse is expressly recognized in the CRPD, and that treaty extends the protections found in the CRC. With its recent signing of the CRPD, the U.S. has reaffirmed its obligation to protect the right to be free from physical violence.⁹⁸ CRPD article 16 provides for freedom "from all forms of exploitation, violence and abuse" and mandates that Parties "take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities . . ."⁹⁹ These provisions strongly reaffirm the rights and protections articulated in the CRC¹⁰⁰ and underscore the fact that those rights extend to all persons, with or without disability. Corporal punishment is also incompatible with CRPD article 17, which protects the integrity of the person by requiring that "[e]very person with disabilities has a right to respect for his or her physical and mental integrity . . ."¹⁰¹ Protection of the integrity of the person reaffirms and extends the right to "liberty and security of person"¹⁰² protected by the ICCPR as well as the "right to security of person"¹⁰³ guaranteed by the ICERD.¹⁰⁴

Children with disabilities are doubly vulnerable, on account of age and disability, to violations of their rights, and, as such, they are entitled to special measures of protection.¹⁰⁵ The CRPD places an affirmative obligation on states to take actions with "the best interests of the child [as] a primary consideration"¹⁰⁶ to guarantee these rights. The Committee on the Rights of the Child has declared that the best interests of the child principle "cannot be used to justify practices, including corporal punishment and

96. United Nations Treaty Collection, Status of Treaties, CRD, *supra* note 3.

97. *See* Vienna Convention, *supra* note 34, art. 18.

98. The U.S. signed the CRPD on July 30, 2009 and is thus bound not to violate the object and purpose of the treaty. *See id.* The right to be free from violence runs throughout the CRPD, including articles 14 (liberty and security of person), 15 (freedom from torture or cruel, inhuman or degrading treatment or punishment), 16 (freedom from exploitation, violence and abuse), and 17 (protecting the integrity of the person). *See generally* CRPD, G.A. Res. 61/106, *supra* note 59.

99. CRPD, G.A. Res. 61/106, *supra* note 59, art. 16(1).

100. *See* CRC, G.A. Res. 44/25, *supra* note 49, arts. 19, 37; *see also supra* notes 42–46, 49–51 and accompanying text.

101. *See* CRPD, G.A. Res. 61/106, *supra* note 59, art. 17.

102. *See* ICCPR, G.A. Res. 2200A (XXI), *supra* note 50, art. 9(1).

103. *See* ICERD, G.A. Res. 2106 (XX), *supra* note 32, art. 5(b).

104. *See* Sarah Y. Lai & Regan E. Ralph, *Female Sexual Autonomy and Human Rights*, 8 HARV. HUM. RTS. J. 201, 207 (1995) (noting how "the principle of bodily integrity . . . is generally rooted in the right to security of person and the inherent dignity of the human person.").

105. *See supra* Part II.A.

106. *See* CRPD, G.A. Res. 61/106, *supra* note 59, art. 7(2).

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other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity."¹⁰⁷ Corporal punishment "directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity."¹⁰⁸ Thus, corporal punishment in schools is never in the best interests of a child with disabilities, nor for that matter, of any child.

1. Permissible Use of Force against Students under Limited Circumstances

Educators are confronted with the difficult task of maintaining order and ensuring a safe environment for their students. The Committee on the Rights of the Child, when detailing with the scope of the international prohibition on corporal punishment in General Comment No. 8, provided room for schools to use force under certain, very limited circumstances. Under international law, in "exceptional circumstances . . . dangerous behavior [may] justif[y] the use of reasonable restraint," but that it can only be the "minimum necessary use of force for the shortest necessary period of time . . ."¹⁰⁹ Furthermore, the Committee makes very clear that "the use of force to punish" is never acceptable, nor is "the deliberate infliction of pain as a form of control."¹¹⁰

In order to prevent the use of unnecessary force and to ensure an appropriate response to dangerous situations, the Committee specifies that educators must receive detailed guidance. They must be trained to respond to dangerous behavior, "both to minimize the necessity to use restraint and to ensure that any methods used are safe and proportionate to the situation and do not involve the deliberate infliction of pain as a form of control."¹¹¹ Educators should only use force when absolutely necessary and should do so in compliance with the strict limits articulated in international law.¹¹²

According to international law and best practices, training is especially important where educators are interacting with students with disabilities. The CRPD contains a general obligation whereby States, in their actions "to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities," undertake "[t]o promote the training of professionals and staff working with persons with disabilities in the rights recognized" in the Convention.¹¹³ Furthermore, in recognizing "the right of persons with disabilities to education," States "shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train

107. See Comm. on the Rights of the Child, 42d Sess., Gen. Comment No. 8, *supra* note 1, ¶ 26.

108. *Id.* ¶ 21.

109. See *id.* ¶ 15 (commenting on the CRC, arts. 19, 28(2), and 37).

110. See *id.*

111. *Id.*

112. See *id.*

113. CRPD, G.A. Res. 61/106, *supra* note 59, art. 4(1)(i).

professionals and staff who work at all levels of education. Such training shall incorporate disability awareness”¹¹⁴

Appropriate training for educators, in order to guarantee and protect the rights of children with disabilities, takes into account these students’ particular vulnerability. The U.N. Secretary General’s 2006 Study on Violence against Children and General Comment No. 9 from the Committee on the Rights of the Child both recognize that children with disabilities are especially vulnerable to violence,¹¹⁵ including in schools.¹¹⁶ Given this vulnerability, it is imperative that educators who work with students with disabilities are appropriately trained to provide for these students’ needs. International law permits minimal use of force against students when absolutely necessary; educators must receive training on acting within the limits articulated in the law in order to protect students from excessive, abusive, and potentially injurious force.

E. Corporal Punishment Can Infringe on the Right to Education

Widely accepted standards in international law guarantee all individuals the right to education. As pronounced in the Universal Declaration of Human Rights, “[e]veryone has the right to education Education shall be directed to the full development of human personality and to the strengthening of respect for human rights and fundamental freedoms.”¹¹⁷ This right is expressly developed in the CRC, which mandates that all Parties provide free and compulsory primary education.¹¹⁸ The Convention also requires that education be directed, among other things, to the “development of the child’s personality, talents and mental and physical abilities to their fullest potential”¹¹⁹ A child’s right to education is similarly enshrined in the ICESCR, which recognizes “the right of everyone to education,” which “shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.”¹²⁰ Combined, these instruments underscore that the right to education has substantive content directed at maximizing each child’s potential.

The right to education must be realized in a manner consistent with the fundamental dignity of the child. School discipline, under international law, must be

114. *Id.* art. 24.

115. The Secretary-General, *Report of the Independent Expert for the United Nations Study on Violence against Children*, ¶ 31, delivered to General Assembly, U.N. Doc. A/61/299 (Aug. 29, 2006) (prepared by Paulo Sérgio Pinheiro).

116. Comm. on the Rights of the Child, 43d Sess., Gen. Comment No. 9, *supra* note 53, ¶ 42.

117. UDHR, G.A. Res. 217A(III), *supra* note 30, art. 26.

118. CRC, G.A. Res. 44/25, *supra* note 49, art. 28. Note, however, that while the U.S. has signed the CRC, it remains one of only two countries not to have ratified the treaty.

119. *Id.* art. 29(1)(a).

120. International Covenant on Econ., Soc. and Cultural Rights, G.A. Res. 2200A (XXI), art. 13, U.N. GAOR, 21st Sess., 1496th plen. mtg., U.N. Doc. A/6316 (Dec. 16, 1966), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/NR0732/59/IMG/NR073259.pdf?OpenElement> [hereinafter ICESCR, G.A. Res. 2200A (XXI)].

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administered such that the child's dignity is preserved, and the child's right to education is realized. Article 28 of the CRC states that "States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity"121 In General Comment 8, the Committee on the Rights of the Child notes that corporal punishment "directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity."122 Likewise, the Committee on Economic, Social and Cultural Rights, in their commentary on the right to education, notes that corporal punishment is incompatible with the notion of dignity inherent to that right.123

When children are subjected to corporal punishment, they are in effect forced to trade their right to education for their right to physical integrity. Corporal punishment can leave students disengaged in school, less likely to succeed, and more likely to drop out. A Save the Children survey of children in South Asia found that regular beatings resulted in a loss of interest in studies and a drop in academic performance.124 A statistical study of public education in Alabama found a correlation linking corporal punishment in schools to drop-out rates.125 Physical punishment pushes children out of school, and by doing so impinges on students' right to education.

1. Corporal Punishment and the Right to an Inclusive Education

A critical element of the right to education for children with disabilities is the right to an inclusive education. "Inclusive education is based on the principle that all children should learn together, wherever possible, regardless of difference."126 Schools with an inclusive orientation can be one of the most effective means of ending discrimination against students with disabilities,127 according to Vernor Muñoz, the U.N. Special

121. CRC, G.A. Res. 44/25, *supra* note 49, art. 28.

122. Comm. on the Rights of the Child, 42d Sess., Gen. Comment No. 8, *supra* note 1, ¶ 21.

123. ECOSOC, Comm. on Economic, Social and Cultural Rights, 21st Sess., Gen. Comment No. 13, *supra* note 7, ¶ 41 ("[i]n the Committee's view, corporal punishment is inconsistent with the fundamental guiding principle of international human rights law enshrined in the Preambles to the Universal Declaration of Human Rights and both Covenants: the dignity of the individual.").

124. See generally KATE HARPER ET AL., SAVE THE CHILDREN, ENDING PHYSICAL AND HUMILIATING PUNISHMENT OF CHILDREN: MANUAL FOR ACTION (2005), available at <http://mena.savethechildren.se/Global/scs/MENA/Resources/Ending%20Physical%20and%20Humiliating%20Punishment%20of%20Children%20%28ENGLISH%29.pdf>.

125. A VIOLENT EDUCATION, *supra* note 2, at 58 (citing Sandra de Hotman, A Comparison of School Systems in Alabama Using Corporal Punishment and Not Using Corporal Punishment on Selected Demographic Variables (1997) (unpublished dissertation) (on file with Human Rights Watch) (finding a statistically significant correlation between districts that use corporal punishment and districts with higher drop-out rates)).

126. U.N. Human Rights Council, *The Right to Education of Persons with Disabilities: Report of the Special Rapporteur on the Right to Education*, ¶ 9, U.N. Doc. A/HRC/4/29 (Feb. 19, 2007) (prepared by Vernor Muñoz), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/108/92/PDF/G0710892.pdf?OpenElement>.

127. *Id.* ¶ 18.

Rapporteur on the Right to Education, and are consequently an essential tool for helping ensure that these students can secure their full right to education.¹²⁸

The CRC recognizes the “right of the disabled child to special care,” which should “ensure that the disabled child has effective access to and receives education . . . in a manner conducive to the child’s achieving the fullest possible social integration and individual development”¹²⁹ The CRC further states that education should be directed to the “development of the child’s personality, talents and mental and physical abilities to their fullest potential.”¹³⁰ The practice of corporal punishment in schools is incompatible with a child’s ability to develop his or her skills to the fullest extent, and, instead, creates an environment that is punitive and violent, where children are fearful and unproductive.¹³¹ Rather than ensuring that children with disabilities are integrated into the classroom, corporal punishment violates their right to an inclusive education by creating an intimidating and threatening environment and establishing further barriers to accessing a meaningful education.

Additionally, the CRPD,¹³² the first comprehensive international instrument addressing the rights of persons with disabilities, emphasizes the right of children with disabilities to an inclusive education. The CRPD requires that states provide an education system directed at developing the mental and physical abilities of persons with disabilities to their fullest potential.¹³³ Furthermore, article 24(2)(b) requires states to ensure that “[p]ersons with disabilities can access an inclusive, quality, and free primary and secondary education on an equal basis with others in the communities in which they live”¹³⁴

Subjecting children with disabilities to corporal punishment in schools denies their right to an inclusive education. Not only are disabled children beaten in disproportionate numbers relative to the general student population, but they are also often beaten for behavior that stems directly from their disability.¹³⁵ This is wholly incompatible with an inclusive education, under which access to a meaningful education must be provided without distinction.¹³⁶ Corporal punishment creates a hostile, violent environment that establishes barriers to education for students with disabilities; this is incompatible with an educational environment that allows these

128. *See id.*; *see also* UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION & MINISTRY OF EDUCATION AND SCIENCE SPAIN, *The Salamanca Statement and Framework for Action on Special Needs Education*, ¶ 2, in WORLD CONFERENCE ON SPECIAL NEEDS EDUCATION: ACCESS AND QUALITY (Salamanca, Spain 1994), available at http://www.unesco.org/education/pdf/SALAMA_E.PDF.

129. CRC, G.A. Res. 44/25, *supra* note 49, art. 23.

130. *Id.* art. 29(1)(a).

131. A VIOLENT EDUCATION, *supra* note 2, at 25–26, 54–58.

132. CRPD, G.A. Res. 61/106, *supra* note 59, art. 24.

133. *See id.*

134. *Id.* art. 24(2)(b). Similarly, the U.S. Individuals with Disabilities Education Act (“IDEA”) grants persons with disabilities the right to a “free appropriate public education.” 20 U.S.C. § 1400(d)(1)(A) (2006).

135. A VIOLENT EDUCATION, *supra* note 2, at 79–83.

136. *See* CRC, G.A. Res. 44/25, *supra* note 49, art. 2; CRPD, G.A. Res. 61/106, *supra* note 59, pmb1., art. 7.

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children to develop to their fullest mental and physical potential, as required for an inclusive education.¹³⁷ Corporal punishment can prevent disabled students from participating and engaging in school and can result in them failing to thrive academically.¹³⁸ While children with disabilities have the right to an inclusive education that promotes their “social integration and individual development,”¹³⁹ subjecting these children to corporal punishment serves to exclude them from meaningful participation in schools and creates an environment where they struggle to succeed. Not only does this undermine the right of children with disabilities to an *inclusive* education, it also violates their fundamental right to education as a whole.

F. Non-discrimination and Equality

Corporal punishment in the U.S., which is used at disproportionately high rates against students with disabilities¹⁴⁰ and African American students,¹⁴¹ can also violate children’s rights to non-discrimination, a fundamental principle of human rights law.¹⁴² The U.S. is bound by these principles of non-discrimination, and, as such, may not apply corporal punishment in a discriminatory manner. For instance, the ICCPR, to which the U.S. is party, prohibits corporal punishment through article 7¹⁴³ and states that the rights in the ICCPR must be recognized “without distinction of any kind.”¹⁴⁴ Furthermore, the ICCPR provides that “every child shall have, without any discrimination as to race, colour, [or] sex . . . the right to such measures of protection as are required by his status as a minor”¹⁴⁵

The right to education articulated under international law must be guaranteed “without discrimination of any kind,” including discrimination on the grounds of race or disability.¹⁴⁶ Accordingly, all children must be provided with access to education, without distinction. The U.S. is party to the ICERD. Article 5(b) of ICERD requires the U.S. to protect “the right of everyone, without distinction . . .

137. See CRPD, G.A. Res. 61/106, *supra* note 59, art. 24; CRC, G.A. Res. 44/25, *supra* note 49, arts. 23, 28, 29.

138. IMPAIRING EDUCATION, *supra* note 17, at 43–46.

139. CRC, G.A. Res. 44/25, *supra* note 49, art. 23.

140. IMPAIRING EDUCATION, *supra* note 17, at 27–29.

141. A VIOLENT EDUCATION, *supra* note 2, at 71–75.

142. See, e.g., Inter-Am. Ct. of Human Rights, *Advisory Opinion on Juridical Condition and Rights of the Undocumented Migrants*, ¶¶ 100–01, 110, OC-18/03 (Sept. 17, 2003), available at <http://www.unhcr.org/refworld/docid/425cd8eb4.html> (last visited on Mar. 18, 2010) (commenting on the nature of “the fundamental principle of equality and non-discrimination” that “encompass[es] all States.”).

143. See *supra* notes 79–81 and accompanying text.

144. ICCPR, G.A. Res. 2200A (XXI), *supra* note 50, art 2(1).

145. *Id.* art. 24(1).

146. See, e.g., CRC, G.A. Res. 44/25, *supra* note 49, art. 2; ICESCR, G.A. Res. 2200A (XXI), *supra* note 120, art. 2; U.N. Comm. on Econ., Social and Cultural Rights, 11th Sess., Gen. Comment No. 5, *Persons with Disabilities*, ¶ 5, U.N. Doc. E/1995/22 (Dec. 9, 1994).

[and] to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution”¹⁴⁷ Likewise, article 5(e)(v) of the ICERD requires non-discrimination in access to education.¹⁴⁸ Yet African American students are significantly more likely to be punished than their white counterparts, when compared to relevant percentages of nationwide and statewide student populations.¹⁴⁹ In effect, African American students have their rights to security of person violated at disproportionate rates, impeding on their right to access and participate in public education.

Non-discrimination in access to education is especially important for children with disabilities. As explained by the Committee on the Rights of the Child:

Children with disabilities have the same right to education as all other children and shall enjoy this right without any discrimination and on the basis of equal opportunity as stipulated in the Convention. For this purpose, effective access of children with disabilities to education has to be ensured to promote “the development . . . and mental and physical abilities to their fullest potential.”¹⁵⁰

The right to education thus requires that all children, including children with disabilities, are provided with meaningful access to education and that measures are in place to ensure that barriers do not impede the realization of this right.

1. Discrimination against Students with Disabilities in the Administration of Corporal Punishment

The U.S., as a signatory to the CRPD, is obliged to uphold the object and purpose of the treaty. Non-discrimination on the grounds of disability is one of the clear purposes of the treaty, which in article 1 states that its purpose is “to promote, protect and ensure the full and equal enjoyment of all human rights . . . by all persons with disabilities, and to promote respect for their inherent dignity.”¹⁵¹ Yet the disproportionate rate of corporal punishment against students with disabilities in U.S. public schools is incompatible with this norm.

Non-discrimination against Persons with Disabilities Is an Established Norm of International Law. International treaty law expressly prohibits discrimination on the basis of disability. Specifically, the CRPD mandates that States Parties “undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of

147. See ICERD, G.A. Res. 2106 (XX), *supra* note 32, art. 5(b).

148. *Id.* art. 5(e)(v).

149. A VIOLENT EDUCATION, *supra* note 2, at 71–75.

150. Comm. on the Rights of the Child, 43d Sess., Gen. Comment No. 9, *supra* note 53, ¶ 62 (citation omitted).

151. CRPD, G.A. Res. 61/106, *supra* note 59, art. 1.

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disability.”¹⁵² Discrimination is defined broadly to include “distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”¹⁵³ All of the provisions in the Convention apply with equal force to protect the rights of children with disabilities as well as the rights of adults, and the special situation of children is recognized through several articles that make specific reference to children with disabilities. Not only does the Convention recognize that “children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children,”¹⁵⁴ but it mandates that “the best interests of the child shall be a primary consideration” for “all actions concerning children with disabilities.”¹⁵⁵

Discrimination on the basis of disability is also explicitly prohibited by the CRC, the world’s most widely ratified international human rights treaty.¹⁵⁶ The CRC mandates that the rights enumerated therein are to be guaranteed “without discrimination of any kind, irrespective of the child’s . . . disability . . . or other status.”¹⁵⁷ The rights of children with disabilities are further elaborated in article 23 of the CRC whereby States must ensure that a child enjoys a full and decent life, facilitate the child’s active participation in the community, and promote the child’s fullest possible social integration and individual development.¹⁵⁸ These special provisions for children are included without prejudice to the general applicability of the principles of the CRC to the situation of children with disabilities. This adds force to the other provisions of the CRC, including respect for the dignity of the child and the child’s right to freedom from all forms of discrimination.

In addition, non-discrimination as articulated in the ICESCR has been expressly extended to include distinction based on disability. The Covenant prohibits discrimination based on many enumerated grounds as well as “other status;” General Comment No. 5 of the ICESCR states that “the requirement contained in article 2 (2) of the Covenant that the rights ‘enunciated . . . will be exercised without discrimination of any kind’ based on certain specified grounds ‘or other status’ clearly applies to discrimination on the grounds of disability.”¹⁵⁹

152. *Id.* art. 4.

153. *Id.* art. 2.

154. *Id.* pmb. (r).

155. *Id.* art. 7(2).

156. BLANCHFIELD, *supra* note 66, at 1.

157. CRC, G.A. Res. 44/25, *supra* note 49, art. 2(1). Note, however, that while the U.S. has signed the CRC, it remains one of only two countries not to have ratified the treaty.

158. CRC, G.A. Res. 44/25, *supra* note 49, art. 23.

159. U.N. Comm. on Econ., Soc. and Cultural Rights, 11th Sess., Gen. Comment No. 5, *supra* note 146, ¶ 5.

The U.S. Is Bound Not to Discriminate against Students with Disabilities. The U.S. is bound by fundamental norms of non-discrimination widely recognized in numerous international treaties and mechanisms, as well as by the specific norm prohibiting discrimination on the basis of disability, as a signatory to the CRPD. For instance, as a State Party to the ICCPR, the U.S. is obliged “to respect and to ensure” the rights recognized in the Covenant to all individuals “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹⁶⁰ Furthermore, as State Party to ICERD, the U.S. has undertaken “to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law”¹⁶¹ As defined in ICERD, discrimination includes “any distinction, exclusion, restriction or preference” that has “the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”¹⁶² States Parties to ICERD thus have an obligation to protect individuals from overt discrimination, as well as actions that have a discriminatory impact.¹⁶³ Moreover, this protection is to be provided through “the use of public institutions or through the activities of private institutions.”¹⁶⁴

While the U.S. is bound by strong international law to abide by the principle of non-discrimination, there are disparities between accepted definitions of discrimination under international law and under U.S. domestic law. The U.N. Human Rights Committee, in keeping with the body of international law, defines the concept of discrimination broadly, stating that:

[T]he term “discrimination” as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.¹⁶⁵

160. ICCPR, G.A. Res. 2200A (XXI), *supra* note 50, art. 2.

161. ICERD, G.A. Res. 2106 (XX), *supra* note 32, art. 5.

162. *Id.* art. 1.

163. See U.N. Comm. for the Elimination of Racial Discrimination, 51st Sess., Gen. Recommendation No. 20, *Report of the Committee on the Elimination of Racial Discrimination: Non-Discriminatory Implementation of Rights and Freedoms (Art. 5)*, ¶¶ 2, 5, U.N. Doc. A/51/18 (Sept. 30, 1996).

164. *Id.* ¶ 5. It is, however, important to note that at the time of ratification of the ICERD, the U.S. entered Reservations and Declarations that declared that the Convention shall not require the enactment of legislation or other measures that might interfere with the right to individual privacy and freedom from governmental interference in private conduct. See United Nations Treaty Collection, Status of Treaties, ICERD, Declarations and Reservations: U.S., ¶ (I)(2), http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&cmdtsg_no=IV-2&chapter=4&lang=en (last visited Mar. 18, 2010).

165. U.N. Office of the High Comm’r for Human Rights, Human Rights Comm., 37th Sess., General Comment No. 18, *Non-discrimination*, ¶ 7, U.N. Doc. HRI/GEN/1/Rev.6 (May 12, 2003).

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The U.S., however, maintains that distinctions based on those grounds can be “permitted when such distinctions are, at minimum, rationally related to a legitimate governmental objective.”¹⁶⁶ Furthermore, the U.S. generally rejects the inclusion of effect as well as intent in determining whether laws and practices are discriminatory. Instead, U.S. law defines discrimination more narrowly, requiring a showing of discriminatory *intent* to identify cognizable discrimination.¹⁶⁷

Despite the discrepancies between the obligations articulated in the ICCPR and the ICERD—two treaties by which the U.S. is legally bound—and the U.S.’s interpretations thereof,¹⁶⁸ the U.S. remains bound to ensure that individuals are not subjected to treatment on a discriminatory basis. In fact, the U.S.’s definition of discrimination has been repeatedly rejected by the Committee on the Elimination of Racial Discrimination, the body empowered to make authoritative interpretations of and monitor compliance with the ICERD, for its failure to effectively prohibit conduct that is not discriminatory in purpose but has a discriminatory effect. In its 2008 Report, the Committee again expressed its concern that “the definition of racial discrimination used in the federal and state legislation and in court practice is not always in line with that contained in . . . the Convention”¹⁶⁹ and recommended that the U.S. alter its definition of discrimination in order to comply with its legal obligations under the treaty.

III. U.S. LAW PERMITTING CORPORAL PUNISHMENT

A. U.S. Federal and State Law on Corporal Punishment

1. U.S. Law Fails to Protect Children from Corporal Punishment

International human rights law prohibits the use of corporal punishment in schools. In sharp contrast to the protections they deserve, children in the U.S. face inadequate federal and state law that fails to protect them from corporal punishment. U.S. common law has tolerated the use of corporal punishment on children for

166. 138 CONG. REC. S4781–01 (daily ed. Apr. 2, 1992) (U.S. Reservations, Declarations, and Understandings, International Covenant on Civil and Political Rights).

167. *See, e.g.*, *Washington v. Davis*, 426 U.S. 229 (1976).

168. This is often referred to as American Exceptionalism, whereby the “U.S. signs on to international human rights and humanitarian law conventions and treaties and then exempts itself from their provisions by explicit reservation, nonratification, or noncompliance.” Michael Ignatieff, *Introduction: American Exceptionalism and Human Rights*, in *AMERICAN EXCEPTIONALISM AND HUMAN RIGHTS* 3 (Michael Ignatieff ed., 2005); *see also* Harold Koh, *On American Exceptionalism*, 55 *STAN. L. REV.* 1483, 1486 (2003).

169. U.N. Office of the High Comm’r for Human Rights, Comm. on the Elimination of Racial Discrimination, 72d Sess., *Consideration of Reports Submitted by States Parties under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America*, ¶ 10, U.N. Doc. No. CERD/C/USA/CO/6 (May 8, 2008); *see also* U.N. Office of the High Comm’r for Human Rights, Comm. on the Elimination of Racial Discrimination, 59th Sess., *Concluding Observations of the Committee on Elimination of Racial Discrimination: United States of America*, ¶ 393, U.N. Doc. No. A/56/18 (Aug. 14, 2001).

centuries,¹⁷⁰ and twenty states in the U.S. have legislation permitting corporal punishment in some form.¹⁷¹ More than thirty years ago, in 1977, the Supreme Court held in *Ingraham v. Wright* that routine corporal punishment does not constitute cruel and unusual punishment nor does it per se violate procedural due process.¹⁷² This federal standard continues to permit corporal punishment, yet it is inconsistent with U.S. obligations under international law, most of which post-date *Ingraham*. Furthermore, the standard is outdated with regard to developments in domestic law: Since the *Ingraham* decision, a majority of states have enacted legislation outlawing the use of corporal punishment in public schools.¹⁷³

Inadequate Federal Protections. In *Ingraham*, a divided Supreme Court held that the Eighth Amendment's prohibition of cruel and unusual punishment did not extend to the practice of corporal punishment in U.S. public schools.¹⁷⁴ The Eighth Amendment was designed to protect those who have been convicted of a crime,¹⁷⁵ and the Court determined that neither the history of the Amendment nor the Court's prior decisions warranted extending such protections to children in public schools.¹⁷⁶ The majority acknowledged that children do have the right to personal security, and this right is jeopardized when corporal punishment is administered.¹⁷⁷ Nonetheless, the majority found the imposition of procedural safeguards, such as notice or a hearing before the punishment is administered, to be unwarranted because they would be costly and would intrude on the decision making of school authorities.¹⁷⁸

170. *See* *Ingraham v. Wright*, 430 U.S. 651, 660 (1977) (stating that corporal punishment “has survived the transformation of primary and secondary education from the colonials’ reliance on optional private arrangements to our present system of compulsory education and dependence on public schools.”).

171. *See supra* note 11.

172. *Ingraham*, 430 U.S. at 651 (1977). Federal Courts of Appeals have also considered corporal punishment under the U.S. Constitution’s substantive due process clause, as well as the equal protection clause. *See, e.g.,* *Hall v. Tawney*, 621 F.2d 607, 611 (4th Cir. 1980); *Garcia v. Miera*, 817 F.2d 650, 656 (10th Cir. 1987); *Saylor v. Bd. of Educ. of Harlan County*, 118 F.3d 507, 514–15 (6th Cir. 1997); *Cunningham v. Beavers*, 858 F.2d 269, 273 (5th Cir. 1988) (holding that intermediate scrutiny under equal protection jurisprudence does not apply to corporal punishment cases because children are not viewed as a “suspect class”).

173. *Compare* GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN, *supra* note 11, *with* *Ingraham*, 430 U.S. at 660–61 (the majority, writing in 1977, observed that corporal punishment “continues to play a role in the public education of school children in most parts of the country [W]e can discern no trend toward its elimination.”).

174. *Ingraham*, 430 U.S. at 664–70.

175. *Id.* at 664.

176. *Id.* at 668–69.

177. *Id.* at 673–74 (noting that the liberty interest in personal security is implicated where public school authorities, acting under color of state law, deliberately punish a child for misconduct by restraint and infliction of appreciable pain).

178. *Id.* at 682.

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The majority's decision in *Ingraham* was contested; four Justices dissented. The dissenting opinion took issue with the majority's limitation of Eighth Amendment protections to the context of criminal convictions, noting that "the constitutional provision is against cruel and unusual punishments; nowhere is that prohibition limited or modified by the language of the Constitution No one can deny that spanking of schoolchildren is 'punishment' under any reasonable reading of the word"179 Furthermore, if certain punishments are prohibited when administered to those convicted of a crime, "then, *a fortiori*, similar punishments may not be imposed on persons for less culpable acts, such as breaches of school discipline."180

The dissent also challenged the majority's failure to uphold any procedural protections that might minimize a child's risk of wrongful punishment.181 This is problematic where the interest at stake—a child's right to personal security—means that post-violation remedies cannot cure the harm once the punishment has been administered. Even if children were able to sue for the wrongful infliction of corporal punishment, "the lawsuit occurs after the punishment has been finally imposed. The infliction of physical pain is final and irreparable; it cannot be undone"182

Post-*Ingraham*, some federal courts have found that students do have a constitutional right to be free from excessive corporal punishment. Some of these courts have held that students have a right to be free from forms of corporal punishment that are "arbitrary, capricious, or wholly unrelated to the legitimate state goal of maintaining an atmosphere conducive to learning."183 Others have found this right where corporal punishment is so brutal and disproportionate to the misconduct that it "shocks the conscience."184 While these developments are important, children in the U.S. have a right to be free from all forms of corporal punishment, and it is imperative that American jurisprudence reflect this right in order to provide children with the protection they deserve.

Current federal standards not only fail to prohibit corporal punishment against all students, they also fail to provide adequate protection for students with disabilities, despite the recent signature to the CRPD. The primary federal statute requiring the provision of education to students with disabilities is the Individual with Disabilities Education Act ("IDEA").185 Under IDEA, students receive an individual education program that details the specific services to be provided to meet their needs.186 While

179. *Id.* at 685 (White, J., dissenting).

180. *Id.* at 684 (White, J., dissenting).

181. *See id.* (noting that the Court held that "students in the public school systems are not constitutionally entitled to a hearing of any sort before beatings can be inflicted on them.").

182. *Id.* at 695 (White, J., dissenting).

183. *Woodward v. Los Fresnos Indep. Sch. Dist.*, 732 F.2d 1243, 1245 (5th Cir. 1984).

184. *See Garcia*, 817 F.2d at 654 (citation omitted); *see also Hall*, 621 F.2d at 613.

185. 20 U.S.C. §§ 1400–1482 (2006).

186. *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers*, 111th Cong. 3 (2009) (statement of Gregory D. Kutz, Managing Director Forensic Audits and

IDEA fails to address the issue of corporal punishment, the Office of Special Education Programs—the relevant federal administrative body within the Department of Education—has informally suggested that IDEA does not prohibit the use of corporal punishment on students with disabilities.¹⁸⁷ Moreover, the limited case law on the issue has construed corporal punishment as “in-class” discipline that is therefore not prohibited or regulated by IDEA.¹⁸⁸

Inadequate State Laws Regarding Corporal Punishment. Twenty states in the U.S. have legislation permitting corporal punishment in some form, often delegating to the school district level the decision of whether or not to use the practice.¹⁸⁹ Corporal punishment was widely accepted in U.S. public schools in the latter part of the nineteenth century and the early twentieth century.¹⁹⁰ While New Jersey banned corporal punishment by statute in 1867,¹⁹¹ many other U.S. states, including Michigan, Connecticut, and Nevada, did not enact a ban until the late 1980s or early 1990s.¹⁹² In 2009, Ohio became the most recent state to enact legislation banning corporal punishment.¹⁹³

State employees are typically shielded from liability for official actions taken within the scope of their employment duties under their state’s “sovereign immunity” statute. In states that use corporal punishment, this means that the administration of physical punishment, as long as it is “reasonable” and in conformity with the school

Special Investigations), available at <http://edlabor.house.gov/documents/111/pdf/testimony/20090519GregKutzTestimony.pdf>.

187. See Letter from William W. Knudsen, Acting Director, Office of Special Education Programs (Mar. 17, 2008), available at <http://www2.ed.gov/policy/speced/guid/idea/letters/2008-1/redacted031708fape1q2008.doc> (last visited Mar. 18, 2010) (“While IDEA emphasizes the use of positive behavioral interventions and supports to address behavior that impedes learning, IDEA does not flatly prohibit the use of mechanical restraints or other aversive behavioral techniques . . . for children with disabilities.”).

188. See *B.A.L. v. Apple*, No. NA00-0068-C-B/G, 2001 U.S. Dist. LEXIS 15055 (S.D. Ind. Sept. 21, 2001); *Cole v. Greenfield-Cent. Cmty. Sch.*, 657 F. Supp. 56, 58–59 (S.D. Ind. 1986) (concluding that a student with disabilities “is not entitled to any unique exemptions or protections from a school’s normal disciplinary procedures regarding corporal punishment because of his handicap.”).

189. See *supra* note 11.

190. See Andre R. Imbrogno, *Corporal Punishment in America’s Public Schools and the U.N. Convention on the Rights of the Child: A Case for Nonratification*, 29 J.L. & EDUC. 125, 128 (2000) (giving an historical overview of the use of corporal punishment in the U.S.); Carl F. Kaestle, *Social Change, Discipline, and the Common School in Early Nineteenth-Century America*, 1 J. INTERDISCIPLINARY HIST. 1, 3–5 (1978) (discussing the evolving attitudes to school discipline in the 19th century); Barbara Finkelstein, *A Crucible of Contradictions: Historical Roots of Violence against Children in the United States*, 40 HIST. EDUC. Q. 1, 1–4 (2000) (discussing the prevalence of violence against children in the U.S. generally in the nineteenth century).

191. N.J. STAT. ANN. § 18A:6-1 (West 2010).

192. THE CENTER FOR EFFECTIVE DISCIPLINE, DISCIPLINE AND THE LAW, STATE LAWS (2009), <http://www.stophitting.com/index.php?page=legalinformation#punishment> (last visited Mar. 18, 2010).

193. *Id.* A ban on corporal punishment in schools was signed into law in Ohio in July 2009. See THE CENTER FOR EFFECTIVE DISCIPLINE, *supra* note 12.

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district's policies, may be considered an official act of maintaining order and discipline, and therefore, protected—such is the case in Kentucky, Arizona, Oklahoma, and Louisiana.¹⁹⁴ Some states that use corporal punishment provide an extra layer of protection for school employees by addressing disciplinary acts explicitly within the state's law, rather than relying on general sovereign immunity. These states include Missouri, North Carolina, Indiana, Wyoming, Florida, Georgia, Arkansas, Alabama, Colorado, Tennessee, and New Mexico.¹⁹⁵

Numerous states across the U.S. not only allow corporal punishment against students in their public schools, they also insulate school officials from being held accountable for their actions. These state laws, which should protect children's rights, instead provide protection for those who violate them. All states should repeal educators' immunity from assault laws and provide adequate redress mechanisms to ensure that parents can protect their children's right to be free from physical discipline in school. Furthermore, in keeping with international standards, all U.S. states should unambiguously prohibit the use of corporal punishment in their public schools.

2. *Current Domestic Law Fails to Uphold International Commitments*

Federal and state laws that continue to permit the use of corporal punishment against children in U.S. public schools are incompatible with U.S. international legal obligations. For instance, the Eighth Amendment's protections from cruel and unusual punishment do not extend to corporal punishment in schools, thus providing less protection for children than international jurisprudence does through comparable provisions on cruel, inhuman, and degrading treatment. This violation of the U.S.'s international obligations continues at the state level, where numerous states continue to allow corporal punishment in public schools and shield those administering the punishment from legal accountability for their actions. Federal and state governments must bring laws and policies in line with binding international human rights law protecting children from corporal punishment.

This need is particularly evident when considering students with disabilities, who are subjected to corporal punishment in U.S. schools at disproportionate rates.¹⁹⁶ Though students with disabilities can be particularly impacted by corporal punishment, domestic law offers less protection to this group than international law

194. *See, e.g.*, ARIZ. REV. STAT. ANN. § 15-341(E) (2009); OKLA. STAT. ANN. tit. 21 § 844 (2002); *LaFrentz v. Gallagher*, 462 P.2d 804 (Ariz. 1969); *Carr v. Wright*, 423 S.W.2d 521 (Ky. Ct. App. 1968); *Wood v. Bd. of Educ. of Danville*, 412 S.W.2d 877 (Ky. Ct. App. 1967); *Roy v. Continental Ins. Co.*, 313 So.2d 349 (La. Ct. App. 1975); *Setliff v. Rapides Parish Sch. Bd.*, 888 So. 2d 1156 (La. Ct. App. 2004); *Holman v. Wheeler*, 677 P.2d 645 (Okla. 1983), *rev'd on other grounds*, 46 P.3d 180 (Okla. 2001).

195. *See, e.g.*, ALA. CODE § 16-28A-1 (1995); ARK. CODE ANN. § 6-17-112 (1994); COLO. REV. STAT. § 22-32-109.1 (2009); FLA. STAT. § 1006.11 (2003); G.A. CODE ANN. § 20-2-732 (2010); IND. CODE § 20-33-8-8 (2007); MO. REV. STAT. § 160.261 (2008); N.M. STAT. § 22-5-4.3 (2005); N.C. GEN. STAT. § 115C-391(h) (2009); TENN. CODE ANN. § 49-6-4105 (1979); WYO. STAT. ANN. § 21-4-308 (1998); *Streeter v. Hundley*, 580 S.W.2d 284 (Mo. 1979).

196. IMPAIRING EDUCATION, *supra* note 17, at 27–29.

does. By ratifying the CRPD and implementing its provisions, along with other treaty obligations, the U.S. could significantly improve the protection available for students with disabilities.

B. The U.S. and International Human Rights Law

For many years, the U.S. has demonstrated a strong commitment to protecting children's rights.¹⁹⁷ Yet when it comes to corporal punishment, both the federal government and individual states fail to uphold those rights. The U.S. is party to treaties that contain provisions, as discussed above, that prohibit or limit the use of corporal punishment, including the ICCPR and the Convention against Torture.¹⁹⁸ Furthermore, the U.S. has signed two additional treaties that provide further protection against corporal punishment—the CRC and the CRPD—and as a signatory, must not violate the object and purpose of these documents.¹⁹⁹ Both the federal government and individual states are obliged to adhere to these provisions of international law.²⁰⁰ Though the U.S. is a federal system in which education is largely controlled by state and local officials, the federal government is obliged and authorized to secure compliance with international laws among the states.²⁰¹ The U.S. must now ratify the CRC and the CRPD to secure additional protections for children and proceed to implement these norms throughout the country.

As party to the ICCPR and the Convention against Torture, the U.S. must follow the observations of the treaty bodies, which state, as detailed above, that corporal punishment can amount to cruel, inhuman, and degrading treatment and is therefore prohibited. In ratifying these treaties, the U.S. attached limiting reservations that attempt to restrict the scope of the treaties and their use in certain domestic contexts.²⁰² Specifically, the U.S. asserts that federal and state laws adequately protect

197. *See, e.g.*, U.N. GAOR, 54th Sess., 52d plen. mtg. at 11, U.N. Doc. A/54/PV.52. Ambassador Betty King, U.S. Representative on the Economic and Social Council, provided the following statement to the General Assembly during the Commemoration of the Tenth Anniversary of the CRC:

Although the United States has not ratified the Convention on the Rights of the Child, our actions to protect and defend children both at home and abroad clearly demonstrate our commitment to the welfare of children. The international community can remain assured that we, as a nation, stand ready to assist in any way we can to enhance and protect the human rights of children wherever they may be.

Id.

198. *See supra* notes 76–84 and accompanying text.

199. *See supra* note 44.

200. *See* ICCPR, G.A. Res. 2200A (XXI), *supra* note 50, art. 50.

201. *See id.*

202. The U.S. government attached three reservations, five understandings, and two declarations to its ratification of the Convention against Torture, and five reservations, five understandings, and four declarations to the ICCPR. The U.S. has not ratified the First Optional Protocol to the ICCPR and did not declare itself bound by article 22 of the Convention against Torture. The First Optional Protocol and article 22 allow the committees responsible for monitoring compliance with the treaties to receive complaints from individuals and organizations, in addition to complaints from other governments. The

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citizens from violations of the treaties; however, as seen in the case of corporal punishment, both the ICCPR and the Convention against Torture offer protection broader than those found in domestic law.

Furthermore, treaty bodies, in commenting on U.S. adherence to binding international norms, have rejected certain U.S. arguments limiting the scope of the rights acknowledged in treaties. In particular, the U.S. considers that its jurisprudence on the cruel and unusual punishment clause of the U.S. Constitution governs domestic interpretation of the cruel, inhuman, and degrading treatment provisions of the relevant international treaties.²⁰³ Yet in the case of corporal punishment, for example, there is a clear divergence: corporal punishment can be considered cruel, inhuman, and degrading treatment, yet according to the U.S. Supreme Court it does not amount to cruel and unusual punishment.²⁰⁴ In 1995, the Human Rights Committee rejected the U.S. reservation to article 7 of the ICCPR (on cruel, inhuman, and degrading treatment), finding it incompatible with the object and purpose of the ICCPR, and therefore invalid.²⁰⁵ By continuing to permit corporal punishment in public schools, the U.S. is not only out of step with evolving international standards,²⁰⁶ it is also in violation of its binding treaty obligations.

The U.S.'s reluctance to offer its children protection from corporal punishment is at odds with its long-standing commitment to children's rights. The U.S. government has repeatedly demonstrated its commitment to principles of law seen in both the CRC and the CRPD. President Obama, in signing the CRPD, referred to the U.S.'s strong record on disability rights, noting that domestic law has long attempted to ensure that "children with disabilities were no longer excluded . . . and [] no longer denied the opportunity to learn the same skills in the same classroom as other

U.S. sought to limit the domestic impact of the ICCPR and the Convention against Torture by declaring both treaties to be "non-self-executing," that is, they cannot be relied upon to enforce rights in U.S. courts without enabling legislation.

203. See United Nations Treaty Collection, Status of Treaties, ICCPR, Declarations and Reservations: U.S., Reservations ¶ 3, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en (last visited Mar. 18, 2010); United Nations Treaty Collection, Status of Treaties, Convention against Torture, Declarations and Reservations: U.S., http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en (last visited Mar. 18, 2010).

204. See *Ingraham*, 430 U.S. at 664.

205. U.N. Office of the High Comm'r for Human Rights, Human Rights Comm., 53d Sess., *supra* note 80; U.N. Office of the High Comm'r for Human Rights, Human Rights Comm., 87th Sess., *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee: United States of America*, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (Dec. 18, 2006), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/459/61/PDF/G0645961.pdf?OpenElement> (discussing in detail U.S.'s failure to comply with article 7 of the Covenant).

206. There are 109 countries around the world that have banned corporal punishment in public schools. GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN, COUNTDOWN TO UNIVERSAL PROHIBITION (2007), <http://www.endcorporalpunishment.org/pages/progress/countdown.html> (last visited Mar. 18, 2010).

children.”²⁰⁷ Obama went on to note that the CRPD “reaffirms the inherent dignity and worth and independence of all persons with disabilities.”²⁰⁸ Likewise, when Ambassador Madeleine Albright, then U.S. permanent representative to the U.N., signed the CRC on behalf of the U.S., she declared that:

The convention is a comprehensive statement of international concern about the importance of improving the lives of the most vulnerable among us, our children United States participation in the Convention reflects the deep and long-standing commitment of the American people.²⁰⁹

As signatory to the CRC and the CRPD, the U.S. must adhere to the object and purpose of these conventions²¹⁰—a fitting requirement in light of the U.S.’s long-standing commitment to the principles underlying the documents. Corporal punishment violates, among other things, the inherent dignity of the child, and is thus inconsistent with the object and purpose of both conventions.²¹¹ The provisions of the CRC are widely accepted in international law; the U.S. is one of only two countries worldwide which has not yet ratified the CRC.²¹² The convention, according to the U.S. Supreme Court, is as an expression of “the overwhelming weight of international opinion” in interpreting domestic legal standards; the Court goes on to observe that the “express affirmation of certain fundamental rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage of freedom.”²¹³

The U.S.’s obligations to follow international law on corporal punishment extends not only to the federal government but to the states as well—constitutional law requires both individual states and the federal government to uphold international treaties.²¹⁴ The Constitution states: “[A]ll Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and

207. Barack Obama, *supra* note 35.

208. *Id.*

209. Madeleine K. Albright, U.S. Sec’y of State, Remarks by Ambassador Madeleine K. Albright, U.S. Permanent Representative to the United Nations on the Occasion of the Signing of the U.N. Convention on the Rights of the Child (Feb. 16, 1995) (on file with author).

210. *See supra* note 34; *see also* Theodor Meron, *The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination*, 79 AM. J. INT’L L. 283, 285(1985). The U.S. government has also accepted that it is bound by customary international law not to defeat a treaty’s object and purpose. *See Gertz, supra* note 44 (describing the Clinton administration’s acceptance of obligations under the Comprehensive Test Ban Treaty despite the Senate’s failure to ratify).

211. *See* CRPD, G.A. Res. 61/106, *supra* note 59, pmbl., art. 1 (recognizing “the inherent dignity and worth and the equal and inalienable rights of all members of the human family;” its express purpose includes “promot[ing] respect for the[] inherent dignity” of persons with disability.”). The object and purpose of the CRC includes reaffirming “faith in fundamental human rights and in the dignity and worth of the human person.” *Id.* pmbl.

212. The U.S. signed the CRC on February 16, 1995 and Somalia signed on May 9, 2002. *See* United Nations Treaty Collection, Status of Treaties, CRC, *supra* note 3.

213. *Roper v. Simmons*, 543 U.S. 551, 578 (2005).

214. U.S. CONST., art. VI, cl. 2.

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the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”²¹⁵ Human rights treaties, like all other treaty obligations, are binding on state governments.²¹⁶ Furthermore, the U.S. Supreme Court has repeatedly relied upon international human rights standards to interpret U.S. constitutional obligations as applied to state and federal governments.²¹⁷

In sharp contrast to the U.S.’s long-standing commitment to children’s rights and disability rights, corporal punishment still exists in numerous states, and disproportionately affects students with disabilities and African American students. Both federal and state governments must bring their laws, policies, and practices in line with U.S. binding international obligations as party and signatory to the key human rights treaties governing this issue. The U.S. government, in order to further secure protection for U.S. children, should proceed to full ratification of the CRC and the CRPD and ensure that states uphold those international standards.

IV. CONCLUSION

International human rights law binding on the U.S. prohibits the use of corporal punishment in schools. This prohibition stems from numerous well-established human rights norms which are found in treaties to which the U.S. is party or which the U.S. has signed. First, corporal punishment is incompatible with respect for human dignity, a fundamental principle of human rights law found in the UDHR and the ICCPR, among others. Second, corporal punishment can rise to the level of cruel, inhuman, and degrading treatment, according to international treaty bodies charged with interpreting the ICCPR and the CAT—treaties to which the U.S. is party.

Third, corporal punishment violates children’s right to be free from physical violence—a right found in numerous documents including the ICCPR and the ICERD, to which the U.S. is also party. Fourth, corporal punishment is incompatible with a meaningful implementation of the right to education as it creates significant barriers to success in school. The right to education is a fundamental principle of human rights law that is expressly articulated in the CRC and the CRPD, treaties that the U.S. has signed and is therefore bound to uphold their object and purpose.

215. *Id.*

216. See Jordan J. Paust, *Self-Executing Treaties*, 82 AM. J. INT’L L. 760, 760–61 (1988) (explaining that when John Jay was Secretary of Foreign Affairs of the Confederation in 1787, he reported to Congress that a treaty “made, ratified and published by Congress . . . immediately [became] binding on the whole nation, and superadded to the laws of the land.”); see also *Asakura v. City of Seattle*, 265 U.S. 332, 341 (1924) (“The rule of equality established by [the treaty] cannot be rendered nugatory in any part of the United States by municipal ordinances or state laws. It stands on the same footing of supremacy as do the provisions of the Constitution and laws of the United States. It operates of itself without the aid of any legislation, state or national; and it will be applied and given authoritative effect by the courts.”); ICCPR, G.A. Res. 2200A (XXI), *supra* note 50, art. 50 (providing that the provisions of the covenant “shall extend to all parts of federal States without any limitations or exceptions”).

217. See, e.g., *Roper*, 543 U.S. at 574 (“Yet at least from the time of the Court’s decision in *Trop*, the Court has referred to the laws of other countries and to international authorities as instructive for its interpretation of the Eighth Amendment[] . . . [of the U.S. Constitution].”) (citations omitted).

Fifth, the use of corporal punishment at disproportionate rates against specific groups in the U.S.—specifically, African American students and students with disabilities—violates fundamental principles of non-discrimination by which the U.S. is bound. ICERD prohibits the U.S. from discriminating by race in access to education and in the enjoyment of other rights, and the CRPD prohibits the U.S. from discriminating by disability.

Despite these clear, binding international norms, U.S. domestic law at both the federal and state level permits corporal punishment, and the practice is routinely used in some public schools. U.S. doctrines on domestic application of international law do not excuse the U.S. from its international obligations regarding corporal punishment. By ratifying the CRC and the CRPD, and by implementing these treaties and current treaty obligations, the U.S. could take significant steps towards ensuring that American children receive the same protection here in the U.S. as other children do abroad. By bringing its laws and practices in line with international human rights obligations, the U.S. would protect almost a quarter of a million children per year from violent discipline in school, thus helping to ensure safe, effective school environments in which all students can thrive.