



December 28, 2012

**United States' Compliance with the
International Covenant on Civil and Political Rights**

**107th Session of the Human Rights Committee, Geneva
11-28 March 2013**

**Submission of List of Issues on the Rights of Unaccompanied Alien Children Affected by
Immigration Detention in the United States**

I. Reporting Organization

1. The Women's Refugee Commission (WRC) (mission and geographic scope):
The Women's Refugee Commission's mission is to improve the lives and protect the rights of women, children and youth displaced by conflict and crisis. It is an expert resource and advocacy organization that monitors the care and protection of refugee women and children and speaks out on issues of concern to refugee and displaced women, children and adolescents, who bring a critical perspective to effectuating change but often do not have access to governments and policy makers. WRC provides opportunities for refugee women and youth to speak for themselves through briefings, testimony, participation in field assessments and international conferences. Staff and board members carry out an active program of advocacy, making recommendations on how to improve assistance to refugee women and children to policy makers in the United States government and UN agencies, and to NGOs. The Women's Refugee Commission Migrant Rights and Justice Program works to ensure that vulnerable migrants in the United States are not detained unless absolutely necessary and that their basic rights are protected and respected.

II. Issue Summary: Unaccompanied Alien Children and the Growing Numbers of Human Rights Violations¹

2. The number of Unaccompanied Alien Children² (UACs or children) subject to immigration detention in the United States escalated in the years 2011-2012, as did reports documenting treatment of these children.³ Beginning as early as October 2011, the United States experienced a dramatic increase in the number of UACs being apprehended and detained⁴. Because the U.S. government was unprepared for this unprecedented number of children, this influx was accompanied by deterioration in the conditions of their detention, resulting in serious violations of human rights such as the right not to be subjected to cruel, inhumane or degrading treatment (article 7), to liberty, security and not to be subject to arbitrary arrest or detention (article 9), to be treated with humanity and respect for inherent dignity (article 10(1)), to receive fair trial and access to justice (article 14), not to be subjected to unlawful attacks on honour and reputation (article 17), and to be treated with accordance to the status of minors (article 24) without discrimination (articles 2, 26).

3. The infringement on children's human rights took many forms and occurred in various phases of their presence within the territory of the United States and subject to its jurisdiction.⁵ Upon apprehension of the children near the border, there are reports of Customs and Border Protection (CBP) agents employing aggressive physical measures, including shoving, kicking and use of taser guns. During detention in CBP stations, agents have been reported to kick over children's cots as they were trying to sleep, yell at the children, interrogate them through the night, call them animals and use racial slurs and other derogatory terms. The CBP facilities, often called "holding cells," may be frigid,⁶ locked, windowless rooms where the lights are turned on 24 hours a day and there are no beds or private sanitary facilities. In overcrowded cells, children were forced to organize themselves to sleep in shifts on the floor for lack of space. Children detained in the holding cells complained of receiving inadequate food and water, denial of blankets and access to bathing facilities despite being detained in often wet and dirty clothing. Importantly, children never had meaningful access to file a complaint.⁷
4. The physical and verbal violence of CBP agents, their excessive use of force, and the conditions of detention constitute inhumane and degrading treatment,⁸ and violations of the United States' positive obligation to treat all persons deprived of liberty with humanity and respect for their inherent dignity,⁹ and children's right not to be subjected to unlawful attacks on their honour and reputation.¹⁰ The breaches of these obligations are aggravated in the case of children who are entitled to special measures of protection because of their status as minors,¹¹ including "every possible economic and social measure ... to eradicate malnutrition among children and to prevent them from being subjected to acts of violence and cruel and inhuman treatment".¹² These breaches are further intensified by children's inability to file a complaint, contrary to international law.¹³
5. After Customs and Border Protection's initial apprehension and detention of children they deem to be unaccompanied minors, CBP transfers the children to ORR (Office of Refugee Resettlement) detention facilities. Although this transfer should happen within 72 hours, during this recent influx of children, ORR did not have enough available beds for all the children CBP referred to them. As a result, children were languishing in CBP hold facilities for up to two weeks without access to outdoor recreation, beds to sleep on, or information on their legal rights. In response to the large backlog of children awaiting placement in ORR facilities, ORR created temporary "surge"¹⁴ facilities, which had limited social and legal services.
6. Children from contiguous countries in CBP custody receive insufficient screening that assesses asylum and their other legal claims, falling short of compliance with U.S. laws¹⁵ and the U.S. obligation to ensure special measures of protection to children¹⁶ and to "monitor the effective application of the rules regarding the treatment of persons deprived of their liberty."¹⁷
7. Moreover, UACs in the United States, whether or not detained, still have no right to free legal aid, and thousands of UACs proceed with their immigration case alone, without legal counsel or a *guardian ad litem*.¹⁸
8. Additionally, UACs have no meaningful access to attain an attorney while in CBP custody and only receive limited "Know Your Rights" presentations in ORR custody. The deficiencies in legal screening and representation in the existing facilities give rise to a situation in which children's possibilities to receive important legal information and assistance and to be afforded meaningful due process is systematically affected.¹⁹ While States are *encouraged* to provide free legal aid for persons unable to pay for it - bearing in mind the importance of the principle of equality of arms, the possible consequences of the legal proceedings for the children and their special vulnerabilities as minors and persons deprived of liberty - the situation of unaccompanied minors calls for the United States to provide such aid in order to ensure fundamental rights set forth in the ICCPR are respected and realized.²⁰

III. **Concluding Observations**

9. At the time of the United States' previous review by the Human Rights Committee in 2006, the Human Rights Committee expressed concern about the increasing militarization of the U.S.-Mexico border, and requested more detailed information about the issue, in particular on concrete measures adopted to ensure that only agents who have received adequate training on immigration issues enforce immigration laws, in a way compatible with the rights guaranteed by the Covenant.²¹ While not making particular reference to the treatment of UAC's, militarization on the border has had a direct impact on uniquely vulnerable population addressed here.

IV. U.S. Government Report

10. In response to the Human Rights Committee's concerns in its 2006 Concluding Observations, the United States replied that it has pursued a "comprehensive, multi-layered, targeted approach" to border security,²² and that it trains CBP agents on human rights and constitutional law.²³ Furthermore, in its Fourth Periodic Report, the U.S. Government emphasized that prior to the commencement of their work, CBP agents receive significant training that includes modules on constitutional law, and that DHS (Department of Homeland Security) has begun working with CBP on reviewing human rights content.²⁴
11. The U.S. Government also stated that ORR-funded care facilities are licensed and meet ORR standards, and that the facilities provide children with classroom education, health care, socialization, recreation, vocational training, mental health services, family reunification, access to legal services and case management. The Government claims that care provider facilitation case management teams use effective screening tools to assess children for mental health problems and trafficking issues.²⁵ Additionally, the U.S. Government claimed that the ORR takes into consideration the unique nature of each child's situation and child welfare principles when making placement, case management and release decisions that are in the interests of the child.²⁶

V. Other UN Human Rights Bodies Recommendations

12. During the United States' Universal Periodic Review (UPR) in 2010, several comments and recommendations were made by State parties on the rights of migrants generally and specifically during detention. Switzerland noted that thousands of migrants had been detained in harsh conditions and without access to legal counseling for violations of immigration laws (para. 26, A/HRC/16/11), while Cyprus referred to the concerns expressed by a number of treaty bodies related to allegations of brutality and the use of excessive force by law enforcement officials against migrants (para. 50, A/HRC/16/11 (UPR 2011)).
13. The United States stated during the UPR that, in response to concerns from civil society regarding immigration detention and the removal process (para. 70, A/HRC/16/11 (UPR 2011)), DHS has undertaken major reforms to improve detention center management, health, safety, and uniformity among facilities. It further noted that DHS's reforms are designed to ensure detention was used only when appropriate, in light of legal requirements and the need to ensure public safety.
14. Pursuant to the said UPR dialogue, numerous recommendations were issued including: ensure that detention centers for migrants and the treatment they receive meet the basic conditions and universal human rights law (para. 92.164); ensure that migrants in detention, subject to a process of expulsion are entitled to counsel, a fair trial and fully understand their rights, even in their own language (para. 92.185); attempt to restrain any state initiative which approaches immigration issues in a repressive way towards the migrant community and that violates its rights by applying racial profiling, criminalizing undocumented immigration and violating the human and civil rights of persons (para. 92.79) (Guatemala, A/HRC/16/11 (UPR 2011)). Other States recommended the U.S. incarcerate immigrants only exceptionally (para. 92.182); investigate carefully each case of immigrants' incarceration (para. 92.183); adapt the detention conditions of

immigrants in line with international human rights law (para. 92.184) (Switzerland, A/HRC/16/11 (UPR 2011)); reconsider alternatives to the detention of migrants (para. 92.212) (Brazil, A/HRC/16/11 (UPR 2011)); protect the human rights of migrants, regardless of their migratory status (Ecuador, para. 92.210, A/HRC/16/11 (UPR 2011)); and make greater efforts to guarantee the access of migrants to basic services, regardless of their migratory status (Uruguay, para. 92.214, A/HRC/16/11 (UPR 2011)). With the exception of the recommendation by Switzerland that the United States detain immigrants in only exceptional circumstances, the United States accepted all of the above recommendations during the adoption of the U.S. UPR report March 2011.

15. In 2012, the Committee on the Rights of the Child issued a List of Issues concerning additional and updated information related to the second periodic report of the United States under the Optional Protocol to the Convention on the Right of the Child on the Sale of Children, Child Prostitution and Child Pornography²⁷ (CRC/C/OPSC/USA/Q/2). The Committee referred to the State party's report according to which unaccompanied and separated children entering the United States may be particularly vulnerable to exploitation for sex, forced labour or neglect of their needs, and requested that the State Party provide annual data (disaggregated by sex, age, national origin and socio-economic background) on the number of unaccompanied immigrant children apprehended by federal immigration authorities and detained over the reporting period for crimes related to sale of children, child prostitution and child pornography. The Committee further requested information on the subsequent measures taken concerning these children, including deportation orders.²⁸ The United States government responded that it does not have the annual data requested by the Committee and did not respond to the request of the Committee to provide information on subsequent measures taken concerning these children, including deportation orders.²⁹
16. While the United States has not ratified the Convention on the Rights of the Child, it is instructive that in 2005, the Committee on the Rights of the Child issued General Comment No. 6 on the "Treatment of Unaccompanied and Separated Children outside Their Country of Origin."³⁰ General Comment No. 6 stated that UACs should not be detained solely because they are unaccompanied or based on their lack of migratory status, and that detention must only be used as a last resort and for the shortest possible length of time.³¹ Facilities should be located in areas where culturally appropriate community resources and access to legal aid are available. Children should also be provided with all basic necessities, recreation, appropriate medical treatment, psychological counseling where necessary, and prompt and free legal assistance.³²

VI. Recommended Questions

17. Please provide information as to the measures taken to ensure basic human rights, appropriate treatment and protection of unaccompanied children held in CBP and short-term detention facilities. Please indicate the measures taken to monitor and supervise their treatment and provide details on the mechanisms enabling unaccompanied children to safely report abuses and human rights violations by officials.
18. Please provide information on measures taken to address the increased numbers of unaccompanied children entering the United States. Please detail what measures are being taken in order to accommodate the need for beds, blankets, bathing facilities, food, water and medical care in the CBP holding cells. Please elaborate on the detention process and facilities used to accommodate unaccompanied children from the initial apprehension, as well as the percentage of children held longer than the average length of detention (short term/long term), the conditions and the services provided to the children in the different types of facilities (short term/long term).

19. Please provide information on the training that CBP agents receive in the care, custody, and interrogation of children. This should include information on what use of force is deemed appropriate with regards to children.
20. Please provide information regarding the steps taken in order to ensure that unaccompanied children receive appropriate medical, psychological and social services during the period of their detention in CBP and ORR facilities.
21. Please explain why detained unaccompanied children are not provided free legal representation during proceedings related to their detention, bearing in mind the adverse possible consequences of the legal proceedings for the children and their special vulnerabilities as minors and persons deprived of liberty. Please indicate how many children have been tried in Immigration Courts' proceedings with and without legal representation.
22. Please provide information on the measures taken to ensure that detained unaccompanied children know their legal rights while in CBP custody. Please also provide information on how children are screened upon apprehension to determine their legal status and if they have a fear of persecution should they be returned to their home country. Please provide information on how CBP officials are trained to conduct this screening and any oversight of the screening process.

VII. Suggested Recommendations

23. The U.S. should ensure strict adherence by its officials to international human rights norms pertaining to children and take measures to ensure specially trained officials monitor and supervise the treatment of unaccompanied children upon apprehension and during their time in detention.
24. The U.S. should devise a long-term plan that provides for adequate care for possible future influxes of unaccompanied children entering its borders, and to ensure unaccompanied children's human rights are not derogated from while in detention facilities.
25. The U.S. should ensure unaccompanied children have access to appropriate medical, psychological and social services during the period of their detention.
26. The U.S. should ensure that unaccompanied children are appropriately screened and provided with legal orientation.
27. The U.S. should provide detained unaccompanied children with free legal representation, bearing in mind the adverse possible consequences of the legal proceedings for the children and their special vulnerabilities as minors and persons deprived of liberty.

¹ The factual basis of this list of issues, unless explicitly specified otherwise, is based on a recent report regarding the situation of UACs of the Women's Refugee Commission (WRC): *Forced From Home: The Lost Boys and Girls of Central America*, (October 2012), available at: <http://womensrefugeecommission.org/programs/detention/unaccompanied-children>. [hereinafter: WRC report].

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² Unaccompanied Alien Child is a legal term defined in the Homeland Security Act, 6 U.S.C. § 279(g) as: 1) Has no lawful immigration status in the U.S.; AND 2) Has not attained 18 years of age; AND 3) No parent or legal guardian in the U.S. OR 4) No parent or legal guardian in the U.S. available to provide care and physical custody.

³ WRC report, 1, 14-15 20-21, 25-28, 47, 48. See generally, *A Culture of Cruelty*, No More Deaths (September 2012), available at <http://www.nomoredeaths.org/cultureofcruelty.html>; The Women's Refugee Commission and Orrick Herrington & Sutcliffe LLP's report, *Halfway Home: Unaccompanied Children in Immigration Custody* (February 2009), available at http://www.womensrefugeecommission.org/docs/halfway_home.pdf; Appleseed, *Children at the Border* (2011), available at <http://appleseednetwork.org/LinkClick.aspx?fileticket=8PM-o8WHN1Q%3D&tabid=157>; The Center for Public Policy Priorities <http://www.cpp.org/repatriation/A%20Child%20Alone%20and%20Without%20Papers.pdf>; KIND, "The Measure of a Society: The Treatment of Unaccompanied Refugee and Immigrant Children in the U.S." *Harvard Civil Rights-Civil Liberties Law Review*, <https://www.supportkind.org/kind-in-the-media/reports>; DHS OIG; "CBP's Handling of Unaccompanied Alien Children"

[http:// www.oig.dhs.gov/assets/mgmt/oig_10-117_sep10.pdf](http://www.oig.dhs.gov/assets/mgmt/oig_10-117_sep10.pdf); No More Deaths, *Crossing the Line: Human Rights Abuses of Migrants in Short-Term Custody on the Arizona/Sonora Border*, <http://www.nomoredeaths.org/Abuse-Report-Crossing-the-Line/View-category.html>.

⁴ During the first six months of fiscal year 2012, U.S. immigration agents apprehended almost double the number of children than in previous years. Children from Guatemala, Honduras and El Salvador fleeing from the dramatic and recent increases in violence and poverty in their home countries, were a major cause for the influx (WRC report, 1).

⁵ ICCPR Article 2(1); Human Rights Committee, General Comment No. 15: The position of aliens under the Covenant, para 1, 2 (1986), <http://www.ohchr.org/english/bodies/hrc/comments.htm>.

⁶ Children called the holding cells “*las hieleras*” which means “freezers” or “iceboxes” (WRC report, 26).

⁷ A complaint could only be filed in English, online, and the detention facilities lack internet access (WRC report, 47).

⁸ ICCPR Article 7.

⁹ ICCPR Article 10.

¹⁰ ICCPR Article 17.

¹¹ ICCPR Article 24.

¹² Human Rights Committee, General Comment No. 17: Rights of the Child, para 3-4 (1989),

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/cc0f1f8c391478b7c12563ed004b35e3?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/cc0f1f8c391478b7c12563ed004b35e3?OpenDocument)

¹³ Human Rights Committee, General Comment No. 20: Prohibition of torture and cruel treatment or punishment, para 14 (1992), [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?OpenDocument)

Human Rights Committee, General Comment No. 21: Humane Treatment of Persons Deprived of Liberty, para 7 (1992)

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3327552b9511fb98c12563ed004cbe59?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3327552b9511fb98c12563ed004cbe59?OpenDocument)

Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 15 (2004) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/419/56/PDF/G0441956.pdf?OpenElement>

¹⁴ A “surge” is a facility or program opened solely for the purpose to provide short-term emergency shelter for UACs due to an unexpected influx. These programs had short-term licenses for 30 or 60 days (WRC report, iii). While surge facilities were opened solely for the purpose of providing short-term emergency shelter for UACs due to the unexpected influx, they have remained operational beyond their original licensing term, setting up conditions for ongoing rights violations. For instance, in the International Education Services Emergency Surge facility, children were held inside a gymnasium for up to two months. The girls were allowed to leave the gymnasium only to walk to their sleeping cabins and the boys never left it at all and slept in cots in the same gymnasium used for meals and basic programming (WRC report, 21).

¹⁵ Mandated under the Trafficking Victims Protection Reauthorization Act (TVPRA), 8 USCS § 1232(a). See also, Appleseed, *Children at the Border* (2011), available at <http://appleseednetwork.org/LinkClick.aspx?fileticket=8PM-o8WHN1Q%3D&tabid=157>

¹⁶ ICCPR Article 24.

¹⁷ Human Rights Committee, General Comment No. 21: Humane Treatment of Persons Deprived of Liberty, para 6 (1992), [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3327552b9511fb98c12563ed004cbe59?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3327552b9511fb98c12563ed004cbe59?OpenDocument)

¹⁸ Julia Preston, “Young and Alone, Facing Court and Deportation,” *New York Times* (August 25, 2012), available at: <http://www.nytimes.com/2012/08/26/us/more-young-illegal-immigrants-face-deportation.html?pagewanted=all&moc.semityn.www> (WRC report, 25)

¹⁹ Human Rights Committee, General Comment No. 32: Right to Equality Before Courts and Tribunals and to a Fair Trial, para 9 (2007) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/437/71/PDF/G0743771.pdf?OpenElement>

²⁰ Human Rights Committee, General Comment No. 32: Right to Equality Before Courts and Tribunals and to a Fair Trial, para 10 (2007) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/437/71/PDF/G0743771.pdf?OpenElement>

²¹ Human Rights Comm., 87th Sess., July 10-28, 2006, Concluding Observations of the Human Rights Committee: United States of America, ¶27, U.N. Doc. CCPR/C/USA/CO/3/Rev. 1 (Dec. 18, 2006) [hereinafter “Concluding Observations 2006”] available at <http://www1.umn.edu/humanrts/usdocs/hruscomments2.html>. Please refer to next section on “U.S. Government Report” for information on the U.S response.

²² Human Rights Comm., Fourth Periodic report: United States of America, para 634, U.N. Doc. CCPR/C/USA/4 (May 22, 2012) [hereinafter “Fourth Periodic Report”], available at <http://www.state.gov/j/drl/rls/179781.htm>.

²³ *Id.*, para 635.

²⁴ *Id.*

²⁵ *Id.*, para 449.

²⁶ *Id.*, para 448.

²⁷ Committee on the Rights of the Child, 62nd Sess., 14 January–1 February 2013, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, List of Issues concerning additional and updated information related to the consideration of the second periodic report of the United States of America, U.N. Doc. CRC/C/OPSC/USA/Q/2 (July 25, 2012).

²⁸ *Id.*, para 11.

²⁹ Committee on the Rights of the Child, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Written Replies of the United States of America (Addendum) on the List of Issues

concerning additional and updated information related to the consideration of the second periodic report of the United States of America, para 45, U.N. Doc. CRC/C/OPSC/USA/Q/2/ADD.1 (Dec. 12, 2012).

³⁰ Committee on the Rights of the Child, 39th Sess., 17 May-3 June 2005, General Comment No. 6, Treatment of Unaccompanied and Separated Children Outside their Country of Origin, U.N. Doc. CRC/GC/2005/6 (Sep. 1, 2005).

³¹ *Id.*, para. 61.

³² *Id.*, para. 63.