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IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE CHILD

FULLY REVISED THIRD EDITION WITH CD-ROM

For every child
Health, Education, Equality, Protection
ADVANCE HUMANITY

unicef

IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE CHILD

FULLY REVISED THIRD EDITION

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prepared for UNICEF
by Rachel Hodgkin and Peter Newell

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Foreword

The Convention on the Rights of the Child was once described by Nelson Mandela as "that luminous living document that enshrines the rights of every child without exception to a life of dignity and self-fulfilment".*

Almost a decade has passed since the first edition of UNICEF's *Implementation Handbook for the Convention on the Rights of the Child* was launched in January 1998 in Geneva. It has since become a well-known practical tool used by governments, UNICEF and other United Nations agencies, as well as non-governmental organizations, human rights institutions and academics, to guide them on the implementation of the Convention.

That a fully revised third edition is needed already is a testimony to the energy and output of the Committee on the Rights of the Child. This Committee has been examining the reports of States party to the Convention for 14 years. Over that period it has developed a progressive and detailed interpretation of the implications for States of the Convention's 42 substantive articles, and more recently of the two Optional Protocols to the Convention, on sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict.

Between 2001 and 2007, the Committee issued 10 General Comments, authoritative statements of interpretation in relation to particular articles or areas of concern. In addition, the Committee's general discussion of the Convention has become a key annual event that highlights important child rights issues, and recommendations from the Committee have led to two major United Nations studies: that led by Graça Machel on the impact of armed conflict on children, and the recent comprehensive global study on violence against children, led by Professor Paulo Sérgio Pinheiro.

If the Convention is to achieve its potential to transform the lives of children worldwide, it needs to be well known and its binding obligations on States must be fully understood. We hope that this *Handbook* will continue to play a part in this process.

Ann M. Veneman
Executive Director
UNICEF

* Taken from a statement on *Building a Global Partnership for Children*, Johannesburg, 6 May 2000.

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Preface

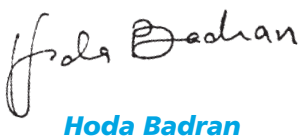
As the first seven chairpersons of the Committee on the Rights of the Child, we welcome the preparation and publication of this *Implementation Handbook for the Convention on the Rights of the Child*.

The *Handbook* provides a detailed reference for the implementation of law, policy and practice to promote and protect the rights of children. The *Handbook* brings together under each article an analysis of the Committee's growing interpretation during its first fourteen years and the examination of over 300 of its Concluding Observations following consideration of States' reports. It places these in the context of key comments, decisions and reports of the other treaty bodies and relevant United Nations bodies.

The *Handbook* also provides a concise description of the role, powers and procedures, and developing activities of the Committee and its appendices include a guide to related United Nations bodies and the texts of key international instruments.

We hope that the *Handbook* will be widely used by all those involved in promoting the fullest possible implementation of the Convention – governments and governmental agencies, UNICEF and other United Nations organizations and bodies, international, regional and national NGOs and others.

As the Committee noted in the report of its second session in 1992, its members are "solely accountable to the children of the world". We hope this *Handbook* will help to bring the Convention alive and encourage all those working with and for children to see implementation as more than a formal process. We hope it will be seen as the vivid and exciting process of working to improve the lives of the world's children.



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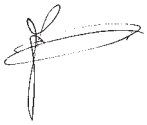
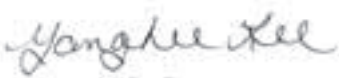
2000-2001



Jakob E. Doek
Chairperson
2001-2007



Yanghee Lee
Chairperson
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Omissions and mistakes which remain are entirely our responsibility. We very much hope that those who use the *Handbook* will provide comments to UNICEF, to ensure that future editions are improved.

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Rachel Hodgkin and Peter Newell
London, August 2007

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Introduction

Aims and structure

The *Handbook* aims to be a practical tool for implementation, explaining and illustrating the implications of each article of the Convention on the Rights of the Child and of the two Optional Protocols adopted in 2000 as well as their interconnections. Under each article the *Handbook* brings together, analyses and summarizes:

- comments and recommendations of the Committee on the Rights of the Child, recognized as the highest authority for interpretation of the Convention, from the official reports of its 44 sessions (1991 to February 2007), and relevant extracts from the Committee's reporting guidelines. It includes excerpts from and summaries of the Committee's General Comments. In particular, it analyses the Committee's "Concluding Observations" on Initial, Second and Third Reports submitted by States Parties. When the Committee is speaking as the Committee (for example in its General Comments, Concluding Observations and in official reports of its sessions and of the Days of General Discussions which it has convened on topics related to the Convention), the special significance of the Committee's comments are highlighted in the text in blue (individual Committee members are also quoted, but the quotations are not highlighted, as they do not carry the same authority);
- illustrative comments from the *travaux préparatoires* of the Convention, the reports of the sessions of the Working Group which drafted the Convention;
- reservations and declarations made by States when ratifying or acceding to the Convention;
- relevant provisions from other international instruments, for example from the Universal Declaration of Human Rights and the two International Covenants, on Civil and Political Rights and on Economic, Social and Cultural Rights (many of the Convention's articles have their origin in these instruments), other Declarations and Conventions, United Nations rules and guidelines on juvenile justice, the Standard Minimum Rules on the Equalization of

Opportunities for Persons with Disabilities, Conventions of the International Labour Organization (ILO) and the Hague Conventions;

- relevant General Comments from other "Treaty Bodies", the Committees responsible for supervising implementation of other international instruments including, in particular, the Human Rights Committee (responsible for the Covenant on Civil and Political Rights) and the Committee on Economic, Social and Cultural Rights (responsible for the Covenant on Economic, Social and Cultural Rights);
- comments from the *Manual on Human Rights Reporting*, the 1997 edition of which includes a chapter by the first Rapporteur to the Committee on the Rights of the Child, Marta Santos Pais, on the Convention;
- comments and recommendations from other key United Nations bodies and agencies, and conclusions and recommendations of global conferences on human rights and social development.

The *Handbook* does not include analysis of regional human rights instruments, nor does it cover international or regional legal case law.

The role and activities of the Committee on the Rights of the Child and the reporting obligations of States Parties under the Convention are covered under the relevant Convention articles – articles 43 and 44.

The *Handbook* is not intended as a guide to the progress of implementation in individual countries. The purpose of quoting the Committee's comments and recommendations to States is to illustrate and expand interpretation of the Convention. Those who wish to analyse progress in particular States are encouraged to obtain the Initial Report and subsequent Periodic Reports of the State, together with the records of the Committee's examination of these reports, and its Concluding Observations.

The section on each article in the *Handbook* is structured to include:

- a concise summary of the article's implications and its relationship with other articles;
- detailed consideration of the background to and implications of individual elements of the article;
- occasional boxed examples from official reports and recommendations (the *Handbook* has not attempted to analyse reports and other information provided by non-governmental organizations). These boxes are intended to illustrate and illuminate issues raised by the article;
- a concluding "Implementation Checklist": this poses questions designed to be used to investigate progress towards implementation; it also emphasizes that the articles of the Convention are interdependent and identifies other closely related articles;
- the appendices include the full texts of the Convention on the Rights of the Child, the two Optional Protocols and other key instruments, and of the Committee's *Guidelines for Periodic Reports (Revised 2005)*. In addition there is a guide to United Nations and United Nations-related agencies, and a bibliography.

How to use the Implementation Checklists

The checklists have no official status. Each Checklist has been drafted to help all those involved in implementation – Governments, UNICEF and other United Nations agencies and international bodies, NGOs and others – to investigate the implications of the article for law, policy and practice and to promote and evaluate progress towards implementation.

The Checklists concern implementation, not reporting. They should not be confused with the official *Guidelines for reporting* prepared by the Committee on the Rights of the Child to advise States parties in the preparation of Initial and Periodic Reports under the Convention.

Each Checklist includes a reminder that no article should be considered in isolation – that the Convention is indivisible and its articles interdependent. The Checklists emphasize that in implementing each article, regard should be paid to the "general principles" highlighted by the Committee on the Rights of the Child and that other articles which are particularly closely related should be identified.

Each Checklist starts with a question about "general measures of implementation" for the article in question: have the responsible government departments and other agencies been identified and appropriately coordinated, has there been a comprehensive review and adoption of an implementation strategy, budgetary analysis and allocation of resources, development of monitoring and evaluation and necessary training and so on. Further questions relate to the detail of implementation.

The questions are drafted so that they can be answered "YES", "NO", "PARTIALLY" or "DON'T KNOW" (insufficient information available to assess implementation). Answering "yes" or "no" to the questions which make up each Checklist does not necessarily indicate compliance or non-compliance with the Convention.

The Checklists can be used as the basis from which to develop more detailed and sensitive checklists for national or local use. Beyond the basic "YES", "NO" or "DON'T KNOW" answers, the questions provide a framework for collecting together the relevant information to build up a full analysis of and commentary on implementation.

So if the answer to a Checklist question is "YES", a summary could follow of the relevant law, policy and practice, and references to more detailed information which confirms the realization of the particular right for all relevant children. If "NO", an outline of the situation, and a summary of action required for compliance could be made. The answer "PARTIALLY" would be accompanied by information on the state of implementation, and on further action required. If the answer is "DON'T KNOW", there could be a summary of available information and an outline of the gaps in information which make it impossible to determine the state of implementation of the particular right.

Explanation of references

Abbreviated references are included in the text throughout, with a bibliography giving full references, and a list of the international instruments referred to, in Appendix 4, page 679. Commonly used acronyms are explained on page 787.

Official reports of the Committee on the Rights of the Child

The following abbreviated versions of references to certain series of the official Reports of the Committee on the Rights of the Child are used in this *Handbook*.

Guidelines. *Guidelines for Initial Reports; Guidelines for Periodic Reports*, Revised Guidelines for Periodic Reports: these are the guidelines prepared by the Committee for States Parties on the reports to be submitted under the Convention. The full titles are:

General Guidelines regarding the form and contents of initial reports to be submitted by States Parties under article 44, paragraph 1(a), of the Convention, (CRC/C/5, 15 October 1991);

General Guidelines regarding the form and contents of periodic reports to be submitted by States Parties under article 44, paragraph 1(b), of the Convention, (CRC/C/58, 20 November 1996, revised 3 June 2005);

States Parties' reports. States Parties must submit their **Initial Report** within two years of ratifying the Convention. Subsequently, every five years, States Parties must submit Periodic Reports, referred to in the *Handbook* as **Second Report, Third Report**, etc.

All **Concluding Observations** and **Preliminary Observations** on States Parties' reports were in the series "CRC/C/15/Add. ..." until the Committee's fortieth session (September/October 2005) when a new self-explanatory system of references has been adopted in the United Nations documentation system and is used from that date in the *Handbook*. These include an abbreviation of the State Party's name and the number of the report. For example "CRC/C/CHN/CO/2" denotes the Concluding Observations on China's Second Report; "CRC/C/OPSC/CHN/CO/1" denotes the Concluding Observations on China's Initial Report under the Optional Protocol on the sale of children, child prostitution and child pornography.

Session reports. An official report is published following each of the sessions of the Committee on the Rights of the Child. In the *Handbook* the full reference is given, for example *Report on the fifth session, January 1994, CRC/C/24, pp. 38 to 43.*

General Comments. These are now referenced in the series: CRC/C/GC/1 – 10.

(Within the United Nations documentation system, special symbols have been established for each of the human rights Treaty Bodies. Thus the reference for all Committee on the Rights of the Child documents begins "CRC/C/..." An explanation of all United Nations human rights document symbols is available from the Office of the High Commissioner for Human Rights' website: www.ohchr.org).

Other key documents

Other key documents frequently referred to include: *Reservations, Declarations and Objections relating to the Convention on the Rights of the Child*. This document is regularly updated. The version referred to in the text is CRC/C/2/Rev.8, 7 December 1999.

Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies. This document is regularly updated. The version referred to in the text is HRI/GEN/1/Rev.8, 8 May 2006.

Travaux préparatoires: As yet, all reports of the "open-ended Working Group" which drafted the Convention on the Rights of the Child have not been published. The "open-ended Working Group" which drafted the Convention on the Rights of the Child was set up by the United Nations Commission on Human Rights in 1979. Edited extracts from the official reports were published in 1992 in *The United Nations Convention on the Rights of the Child, A Guide to the "Travaux préparatoires"*, compiled and edited by Sharon Detrick, Martinus Nijhoff Publishers. Where extracts from the *Travaux préparatoires* are quoted in the *Handbook*, the reference to the official United Nations document and also the book reference are given.

On 11 June 2007, the United Nations, Save the Children Sweden and the Office of the United Nations High Commissioner for Human Rights launched *Legislative History of the Convention on the Rights of the Child, volume 1 and volume 2*. It provides a comprehensive record of the legislative history of the Convention on the Rights of the Child. It contains the records of all meetings during a ten-year period, up to and including the date when the United Nations' Convention on the Rights of the Child was approved in 1989.

Manual on Human Rights Reporting: a first edition, covering major international human rights instruments but not the Convention on the Rights of the Child, was jointly published by the United Nations Centre for Human Rights and the United Nations Institute for Training and Research in 1991.

A new edition, published in 1997, includes a section on "The Convention on the Rights of the Child" by Marta Santos Pais, who was first Rapporteur of the Committee on the Rights of the Child (this edition is jointly published by the Office of the High Commissioner for Human Rights, Geneva; United Nations Institute for Training and Research (UNITAR); United Nations Staff College Project, Turin; United Nations, Geneva, 1997). In the *Handbook*, the two editions are referred to as the *Manual on Human Rights Reporting*, 1991, and the *Manual on Human Rights Reporting*, 1997.

How to get the Committee's reports

The Office of the High Commissioner for Human Rights is the Secretariat for the Committee on behalf of the Secretary-General. Summary records are prepared for all public and some private meetings of the Committee (all meetings are held in public unless the Committee decides otherwise). The Initial and Periodic Reports of States Parties, Concluding Observations of the Committee, Summary Records and Reports on the Committee's sessions are generally made available in the Committee's three working languages (English, French and Spanish); in addition the Committee may decide to make particular documents available in one or more of the other "official" languages of the Convention (Arabic, Chinese and Russian).

Distribution and Sales Section
Palais des Nations
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1211 Geneva 10, Switzerland

They are also available electronically:
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Definition of the child

Text of Article 1

For the purposes of the present Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.

Article 1 of the Convention on the Rights of the Child defines "child" for the purposes of the Convention as every human being below the age of 18. The wording leaves the starting point of childhood open. Is it birth, conception, or somewhere in between? Had the Convention taken a position on abortion and related issues, universal ratification would have been threatened. For the purposes of the Convention, childhood ends at the 18th birthday unless, in a particular State, majority is achieved earlier.

Setting an age for the acquisition of certain rights or for the loss of certain protections is a complex matter. It balances the concept of the child as a subject of rights whose evolving capacities must be respected (acknowledged in articles 5 and 14) with the concept of the State's obligation to provide special protection. On some issues, the Convention sets a clear line: no capital punishment or life imprisonment without the possibility of release for those under the age of 18 (article 37); no recruitment into the armed forces or direct participation in hostilities for those under the age of 15 (article 38 and see Optional Protocol on the involvement of children in armed conflict, page 659). On other issues, States are required to set minimum ages for employment (article 32) and for criminal responsibility (article 40). The requirement to make primary education compulsory also implies setting an age (article 28).

The Committee has emphasized that, when States define minimum ages in legislation, they must do so in the context of the basic principles within the Convention, in particular the principle of non-discrimination (article 2, for example challenging different marriage ages for boys and girls), as well as the principles of best interests of the child (article 3) and the right to life and maximum survival and development (article 6). There must be respect for the child's "evolving capacities" (article 5): in General Comment No. 7 on "Implementing child rights in early childhood", the Committee on the Rights of the Child underlines that "young children are holders of all the rights enshrined in the Convention. They are entitled to special protection measures and, in accordance with their evolving capacities, the progressive exercise of their rights" (CRC/C/GC/7/Rev.1, para. 3). And there should be consistency, for example, in the ages set for the completion of compulsory education and for admission to employment.

Summary

In its reporting guidelines, the Committee asks States Parties for information on the definition of the child in domestic legislation and to specify any differences between boys and girls. In comments, it has encouraged States to review their definition of childhood and to raise the protective minimum ages, in particular those for sexual consent, admission to employment and criminal responsibility. It has emphasized that gender discrimination should be eliminated. ■

Starting point of childhood for purposes of Convention

Neither the 1924 nor the 1959 Declaration of the Rights of the Child defined the beginning or end of childhood. But the Convention's Preamble draws attention to the statement in the Preamble to the 1959 Declaration "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*" (editors' emphasis).

As mentioned previously, the wording of article 1 of the Convention avoids setting a starting point for childhood. The intention of those who drafted the article was to avoid taking a position on abortion and other pre-birth issues, which would have threatened the Convention's universal acceptance.

The preambular statement from the 1959 Declaration, quoted above, caused difficulties within the Working Group that drafted the Convention. In order to reach consensus, the Group agreed that a statement should be placed in the *travaux préparatoires* to the effect that "In adopting this preambular paragraph, the Working Group does not intend to prejudice the interpretation of article 1 or any other provision of the Convention by States Parties." (E/CN.4/1989/48, pp. 8 to 15; Detrick, p. 110)

Thus, the Convention leaves individual States to balance for themselves the conflicting rights and interests involved in issues such as abortion and family planning. And it is relevant to note that article 41 emphasizes that the Convention does not interfere with any domestic legislation (or applicable international law) "more conducive to the realization of the rights of the child..."

Obviously most of the articles of the Convention can apply to the child only after birth. Various States have, however, found it necessary to lodge declarations or reservations underlining their own particular legislative and/or other attitudes to the unborn child, in particular in relation to the child's "inherent right to life" and the State's obligation to "ensure to the maximum extent possible the survival and development of the child" under article 6.

For example, Argentina stated in a declaration: "Concerning article 1 of the Convention, the Argentine Republic declares that the article must be interpreted to the effect that a child means every human being from the moment of conception up to the age of 18." (CRC/C/2/Rev.8, p. 13) The Holy See, in its declaration, "recognizes that the Convention represents an enactment of principles previously adopted by the United Nations and, once effective as a ratified instrument, will safeguard the rights of the child before as well as after birth, as expressly affirmed in the Declaration of the Rights of the Child and restated in the ninth preambular paragraph of the Convention. The Holy See remains confident that the ninth preambular paragraph will serve as the perspective through which the rest of the Convention will be interpreted, in conformity with article 31 of the Vienna Convention on the Law of Treaties of 23 May 1969." (CRC/C/2/Rev.8, p. 24)

The United Kingdom, in contrast, declared that it "interprets the Convention as applicable only following a live birth". (CRC/C/2/Rev.8, p. 42)

And Luxembourg stated: "The Government of Luxembourg declares that article 6 of the present Convention presents no obstacle to implementation of the provisions of Luxembourg legislation concerning sex information, the prevention of back-street abortion and the regulation of pregnancy termination." (CRC/C/2/Rev.8, p. 28) The Committee on the Rights of the Child has suggested that reservations to preserve state laws on abortion are unnecessary. It has commented adversely on high rates of abortion, on the use of abortion as a method of family planning and on "clandestine" abortions, and has encouraged measures to reduce the incidence of abortion. (For further discussion see article 6, page 85.)

China made the following reservation: "The People's Republic of China shall fulfil its obligations provided by article 6 of the Convention to the extent that the Convention is consistent with the provisions of article 25 concerning family planning of the Constitution of the People's Republic of China and with the provisions of article 2 of the Law of Minor Children of the People's Republic of China." (CRC/C/2/Rev.8, p. 16)

The Committee, consistent with its general practice of urging all States to withdraw reservations, urged China to review and withdraw the reservation in its Concluding Observations on China's Initial Report (China CRC/C/15/Add.56, para. 24) and again, in 2005, commenting on China's

Second Periodic Report (China CRC/C/CHN/CO/2, paras. 8 and 9).

In its General Comment No. 7 on "Implementing child rights in early childhood", the Committee emphasizes that young children are holders of all the rights enshrined in the Convention:

"... They are entitled to special protection measures and, in accordance with their evolving capacities,the progressive exercise of their rights. The Committee is concerned that in implementing their obligations under the Convention, States Parties have not given sufficient attention to young children as rights holders and to the laws, policies and programmes required to realize their rights during this distinct phase of their childhood. The Committee reaffirms that the Convention on the Rights of the Child is to be applied holistically in early childhood, taking account of the principle of the universality, indivisibility and interdependence of all human rights." *(Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 3)*

The Committee provides a "working definition" of early childhood:

"In its consideration of rights in early childhood, the Committee wishes to include all young children: at birth and through infancy; during the pre-school years; as well as during the transition to school. Accordingly, the Committee proposes as an appropriate working definition of early childhood the period from birth to the age of 8 years; States Parties should review their obligations towards young children in the context of this definition." *(CRC/C/GC/7/Rev.1, paras. 3 and 4)*

The end of childhood

For the purposes of the Convention on the Rights of the Child, childhood ends and majority is achieved at the 18th birthday "unless, under the law applicable to the child, majority is attained earlier". Thus the Convention is more prescriptive, but not inflexible, about defining for its purposes the end of childhood.

In its 2003 General Comment No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child", the Committee emphasizes that "adolescents up to 18 years old are holders of all the rights enshrined in the Convention; they are entitled to special protection measures, and, according to their evolving capacities, they can progressively exercise their rights (art. 5)". (CRC/GC/2003/4, para. 1)

The Committee has encouraged States to review the age of majority if set below 18, and in particular to raise protective ages. For example:

"The Committee recommends that the State Party enact, as soon as possible, a clear legal definition of the child applicable throughout the country and review existing age limits in various areas, including marriage, child labour and the Penal Code provisions on child sexual abuse, in order to bring them into compliance with international standards." *(Sri Lanka CRC/C/15/Add.207, para. 22)*

Commenting on the Second Periodic Report of Saudi Arabia in 2006, the Committee expressed concern

"... that a judge has the discretionary power to decide that a child has reached majority at an earlier age".

It recommended

"... that the State Party take the necessary legislative and other measures to unequivocally set the age of majority at 18 with no exception for specific cases, including within the juvenile justice system..." *(Saudi Arabia CRC/C/SAU/CO/2, paras. 25 and 26)*

Reviewing the Initial Report of Dominica, the Committee noted a distinction between "child" (under 14 years) and "young person" (between 14 and 18 years). It went on to recommend

"... that the State Party ensure that, despite the current distinction between a child and a young person, both receive the same protection under the Convention." *(Dominica CRC/C/15/Add.238, para. 20)*

The Committee has also emphasized that definitions of the child under local customary law must be consistent with article 1 (see, for example, Mozambique CRC/C/15/Add.172, paras. 23 and 24).

In a relevant General Comment on a provision concerning child protection in the International Covenant on Civil and Political Rights, the Human Rights Committee emphasizes that protective ages must not be set "unreasonably low", and that in any case a State Party cannot absolve itself under the Covenant from obligations to children under 18 years old, even if they have reached the age of majority under domestic law.

Article 24 of the International Covenant recognizes the right of every child, without any discrimination, to receive from his or her family, society and the State the protection required by his or her status as "a minor". The Covenant does not define "minor", nor does it indicate the age at which a child should attain majority. In its 1989 General Comment No. 17 the Human Rights Committee states: "This is to be determined by each State Party in the light of the relevant social and cultural conditions. In this respect, States

should indicate in their reports the age at which the child attains his majority in civil matters and assumes criminal responsibility. States should also indicate the age at which a child is legally entitled to work and the age at which he is treated as an adult under labour law. States should further indicate the age at which a child is considered adult for the purposes of article 10, paragraphs 2 and 3 [which cover separate treatment for juvenile offenders]. However, the Committee notes that the age for the above purposes should not be set unreasonably low and that in any case a State Party cannot absolve itself from its obligations under the Covenant regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law." (Human Rights Committee, General Comment No. 17, 1989, HRI/GEN/1/Rev.8, para. 4, p. 184)

During the drafting of the Convention on the Rights of the Child, some States' representatives argued unsuccessfully for an age lower than 18 to be set. However, the view that the age should be set high to afford greater protection prevailed (see E/CN.4/L.1542, pp. 5 and 6; Detrick, pp. 115 and 116). The text allows States in which majority is attained before the age of 18 to substitute a lower age for particular purposes – provided doing so is consistent with the whole of the Convention, and in particular with its general principles. Equally, the Convention itself does not insist that States with higher ages of majority should lower them, acknowledging that the definition in article 1 is "for the purposes of the … Convention".

Reviewing the definition of "child"

In most societies, until they ratified the Convention, there had been no comprehensive consideration of the various laws defining childhood. Article 1 provokes such a review of all relevant legislation in each State Party. The *Guidelines for Periodic Reports (revised 2005)* requests States Parties "to provide updated information with respect to article 1 of the Convention, concerning the definition of a child under their domestic laws and regulations, specifying any differences between girls and boys" (CRC/C/58/Rev.1, para. 19). The Committee continues to encourage States which have not done so to review and harmonize laws with the Convention's definition.

Defining specific minimum ages in legislation

The original *Guidelines for Periodic Reports* (CRC/C/58) requested information on "the minimum legal age defined by the national legislation" for various listed purposes (see box). Many of the issues covered relate to other articles in the Convention; further interpretation and discussion will be found in the sections of this *Handbook* on those articles.

"At what age" issues identified by Committee

In its original *Guidelines for Periodic Reports,* adopted in 1996, the Committee on the Rights of the Child requested States Parties to provide relevant information, with respect to article 1, on the following:

Any differences between national legislation and the Convention on the definition of the child;

The minimum legal age defined by the national legislation for the following:

- Legal and medical counselling without parental consent;
- Medical treatment or surgery without parental consent;
- End of compulsory education;
- Admission to employment or work, including hazardous work, part-time and full-time work;
- Marriage;
- Sexual consent;
- Voluntary enlistment in the armed forces;
- Conscription into the armed forces;
- Participation in hostilities;
- Criminal responsibility;
- Deprivation of liberty, including by arrest, detention and imprisonment, *inter alia* in the areas of administration of justice, asylum seeking and placement of children in welfare and health institutions;
- Capital punishment and life imprisonment;
- Giving testimony in court, in civil and criminal cases;

Lodging complaints and seeking redress before a court or other relevant authority without parental consent;
Participating in administrative and judicial proceedings affecting the child;
Giving consent to change of identity, including change of name, modification of family relations, adoption, guardianship;
Having access to information concerning the biological family;
Legal capacity to inherit, to conduct property transactions;
To create and join associations;
Choosing a religion or attending religious school teaching;
Consumption of alcohol and other controlled substances;

How the minimum age for employment relates to the age of completion of compulsory schooling, how it affects the right of the child to education and how relevant international instruments are taken into account;

In cases where there is a difference in the legislation between girls and boys, including in relation to marriage and sexual consent, the extent to which article 2 of the Convention has been given consideration;

In cases where the criteria of puberty is used under criminal law, the extent to which this provision is differently applied to girls and boys, and whether the principles and provisions of the Convention are taken into consideration."

(CRC/C/58, para. 24)

article 1

The request for information on minimum legal ages does not imply that the Convention requires a specific age to be set in each case. The Committee is simply seeking information on how domestic law defines the child. In general, minimum ages that are protective should be set as high as possible (for example protecting children from hazardous labour, criminalization, custodial sentences or involvement in armed conflict). Minimum ages that relate to the child gaining autonomy and to the need for the State to respect the child's civil rights and evolving capacities, demand a more flexible system, sensitive to the needs of the individual child.

Some "minimum age" issues relate both to increased autonomy and to protection. For example, the child's right to seek legal and medical counselling and to lodge complaints without parental consent, and to give testimony in court, may be crucial to protection from violence within the family. It is not in the child's interests that any minimum age should be defined for such purposes.

The Convention provides a framework of principles; it does not provide direction on the specific age, or ages, at which children should acquire such rights. Under article 12, children capable of forming views have the right to express their views freely in all matters affecting them. Their views must be given "due weight in accordance with the age and maturity of the child". And the Convention emphasizes the importance of respecting children's "evolving capacities" (article 5, see page 77; also article 14, see page 185). Some States, in addition to setting in legislation certain ages for the acquisition of particular rights, include in their law a flexible concept of the child's evolving capacities so that children acquire rights to make decisions for themselves on certain matters once they have acquired "sufficient understanding". The advantage of such formulas is that they avoid rigid age barriers; the disadvantage is that they leave judgements on when children have acquired sufficient understanding to adults, who may not respect the concept of evolving capacities.

The Committee has emphasized consistently that in setting minimum ages, States must have regard to the entire Convention and in particular to its general principles. There must be no discrimination, the child's best interests must be a primary consideration and the child's maximum survival and development must be ensured.

The importance of the non-discrimination principle (article 2) in relation to the definition of the child is stressed in the Committee's *Guidelines for Periodic Reports (Revised 2005)*, which asks for States to specify any differences between girls and boys (CRC/C/58/Rev.1, para. 19).

In relation to monitoring implementation of the whole Convention, the Committee has underlined

the importance of collecting consistent data on all children up to 18.

The list of minimum legal ages the Committee requested information on in its original *Guidelines for Periodic Reports* (CRC/C/58) is by no means comprehensive. During consideration of initial and periodic reports from States Parties, the following additional age-related issues have been raised: voting age and the minimum age for standing in elections; age at which a child can independently acquire a passport; age limitations on access to certain media (films, videos, etc.); age at which a child can join a religious order or community for life.

The next section covers the various issues listed in the original *Guidelines for Periodic Reports* on which the Committee seeks information under article 1 (see box).

Legal or medical counselling without parental consent

While the *Guidelines* seeks information on any "minimum legal age defined by the national legislation", the Convention provides no support for setting a minimum age below which the child cannot seek and receive independent legal or medical counselling. The purpose of the question is to determine which, if any, children are excluded from this right. The right to seek advice does not in itself imply a right to make decisions, which would be dependent on the child's evolving capacities.

Legal counselling. The child's right to receive legal counselling without parental consent is clearly vital to the enforcement of many rights guaranteed under the Convention, including some where the child's interests are distinct from, or may even be in conflict with, those of the parent, for example: in cases of violence to children, including sexual abuse, within the family and in institutions; in cases of dispute over children's rights to a name or a nationality; in cases involving separation from parents, family reunification, illicit transfer and abduction, adoption, exploi-tation in employment and other forms of exploitation.

The child's own right to legal assistance when alleged as or accused of having infringed the penal law is referred to in article 40(2)(b)(ii). Similarly, the child whose liberty is restricted has the right to "prompt access to legal and other appropriate assistance..." under article 37(d). It is also necessary for children to be able to receive legal counselling when exercising their right to be heard in "any judicial and administrative proceedings affecting the child..." (article 12(2)), and to participate in proceedings relating to separation from parents under article 9.

Medical counselling. The child's right to receive medical counselling without parental consent is vital in cases in which the child's views and/or interests are distinct from, or may be in conflict with, those of parents – for example cases of violence by parents and other family members; cases involving child/parent conflicts over access to health services and treatment decisions, and the adolescent child's access to family planning education and services. The child's right to advice and counselling is distinct from consideration of the age at which the child may acquire an independent right to consent to medical treatment – see below.

Article 24(2)(e) requires States to take appropriate measures to ensure that children as well as parents "are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents".

In its General Comment No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child", the Committee proposes:

"In light of articles 3, 17 and 24 of the Convention, States Parties should provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs). In addition, States Parties should ensure that they have access to appropriate information, regardless of their marital status and whether their parents or guardians consent. It is essential to find proper means and methods of providing information that is adequate and sensitive to the particularities and specific rights of adolescent girls and boys...

"With regard to privacy and confidentiality, and the related issue of informed consent to treatment, States Parties should

(a) enact laws or regulations to ensure that confidential advice concerning treatment is provided to adolescents so that they can give their informed consent. Such laws or regulations should stipulate an age for this process, or refer to the evolving capacity of the child; and

(b) provide training for health personnel on the rights of adolescents to privacy and confidentiality, to be informed about planned treatment and to give their informed consent to treatment". (Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, paras. 28 and 33.See also paras. 39

and 41. For full text of General Comments see www.ohchr.org/english/bodies/crc/comments.htm.)

Medical treatment or surgery without parental consent

Some countries have set an age at which a child can give valid consent, or withhold consent, to medical treatment. Legislation in other countries provides that children acquire independent rights to consent and to withhold consent once they are judged to have "sufficient understanding"; in some cases, legislation also defines a minimum age at which maturity should be assumed.

In its General Comment No. 4, referred to above, the Committee states that if an adolescent is of sufficient maturity,

"... informed consent shall be obtained from the adolescent her/himself, while informing the parents if that is in the 'best interest of the child' (art. 3)". (CRC/GC/2003/4, para. 32)

In some countries, legislation enables courts to intervene and order medical treatment of a child in cases where a parent has refused consent, perhaps on cultural or religious grounds. This intervention would be justified under the Convention by article 3(1) and (2).

When compulsory education ends

Article 28(1)(a) and (b) require States to achieve the child's right to education "progressively and on the basis of equal opportunity"; primary education must be compulsory, and the development of different forms of secondary education must be encouraged and made "available and accessible to every child". The ages of primary and secondary education are not defined by the Convention (see article 28, page 424). Article 32 requires States to protect the child from any work that is likely to interfere with the child's education. The Committee on the Rights of the Child has indicated the need to coordinate the age at which compulsory education ends with the age for access to full-time employment (see also article 32, page 495). In several cases, the Committee has expressed concern at "discrepancies" between the ages and proposed "an equal age" (see page 496).

Admission to employment or work, including hazardous work, part-time and full-time work

Article 32 requires States to protect children from "any work that is likely to be hazardous or to interfere with the child's education", to "provide for a minimum age or minimum ages for admission to employment" and to "provide for appropriate regulation of the hours and conditions of employment". The Committee on the Rights of the Child has in several cases recommended that minimum ages should be raised, and, further, has frequently recommended that States should ratify the relevant International Labour Organization's Conventions on minimum ages for employment (see article 32, page 481).

Sexual consent

In most countries, a minimum age is set below which children are judged incapable of consenting to any form of sexual activity with others. The definition of sexual abuse and exploitation includes not only conduct involving violence or other forms of coercion, but also all sexual conduct with a child below a certain age, even when it was or appeared to be consensual (see also article 19, page 257 and article 34, page 523). Consequently sexual intercourse with a child below the age of consent renders the perpetrator automatically liable to the charge of rape.

The Committee on the Rights of the Child has emphasized the importance of setting a minimum age below which a child's consent is not to be considered valid. In its General Comment No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child", the Committee refers to the need to set a minimum age for sexual consent and marriage (see below) and states:

"These minimum ages should be the same for boys and girls (article 2 of the Convention) and closely reflect the recognition of the status of human beings under 18 years of age as rights holders, in accordance with their evolving capacity, age and maturity (arts. 5 and 12 to 17)." (Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, para. 9)

The Committee has proposed to various countries that the age set for sexual consent should be raised, but has not proposed that it should be raised to 18.

It may be assumed that the status of marriage implies an ability to consent to sex with one's partner. The original *Guidelines for Periodic Reports* asks whether the non-discrimination requirements of the Convention's article 2 have been given ample consideration "in cases where there is a difference in the legislation between girls and boys, including in relation to marriage and sexual consent..." (CRC/C/58, para. 24)

The Committee has expressed concern at disparities between ages of consent to heterosexual and to homosexual activities, which amount to discrimination on grounds of sexual orientation:

"... concern is expressed at the insufficient efforts made to provide against discrimination based on sexual orientation. While the

Committee notes the Isle of Man's intention to reduce the legal age for consent to homosexual relations from 21 to 18 years, it remains concerned about the disparity that continues to exist between the ages for consent to heterosexual (16 years) and homosexual relations.
"It is recommended that the Isle of Man take all appropriate measures, including of a legislative nature, to prevent discrimination based on the grounds of sexual orientation and to fully comply with article 2 of the Convention." *(United Kingdom – Isle of Man CRC/C/15/Add.134, paras. 22 and 23. See also United Kingdom – Overseas Territories CRC/C/15/Add.135, paras. 25 and 26)*

Marriage

In many societies, an age is set when children may marry without parental consent (usually the age of majority), and a lower age is set when they may marry with parental consent. In some societies, marriage is permitted in exceptional cases at an earlier age with the permission of a court or other authority, for example when a girl is pregnant or has a child. Marriage age is of particular significance because in many countries upon marrying children are assumed to acquire majority and thus to lose their protective rights under the Convention.

In its General Comment No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child", the Committee expresses concern

"... that early marriage and pregnancy are significant factors in health problems related to sexual and reproductive health. Both the legal minimum age and the actual age of marriage, particularly for girls, are still very low in several States Parties. There are also non-health-related concerns: children who marry, especially girls, are often obliged to leave the education system and are marginalized from social activities. Further, in some States Parties married children are legally considered adults, even if they are under 18, depriving them of all the special protection measures they are entitled under the Convention. The Committee strongly recommends that States Parties review, and where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys." *(Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, para. 20)*

The Committee refers to a similar recommendation, that the minimum age should be 18, made by the Committee on the Elimination of Discrimination against Women in 1994 (General Recommendation No. 21, 1994, HRI/GEN/1/Rev.8, para. 36, p. 315, see below, page 9).

The Committee on the Rights of the Child has repeatedly emphasized to many States Parties that the age of marriage for both girls and boys must be the same to conform with article 2 of the Convention. For example:

"The Committee is concerned at the low legal minimum age for marriage and that different legal ages for marriage are set for girls (14) and boys (16).
"The Committee encourages the State Party to increase the minimum age of marriage for girls and for boys and that it set this minimum age at an equal and internationally acceptable level. The State Party is also advised to undertake awareness-raising campaigns and other measures to prevent early marriages..." *(Mexico CRC/C/MEX/CO/3, paras. 21 and 22)*

The Committee has also expressed concern about discriminatory situations in which different laws may provide different marriage ages within one State – thus asserting its view that the general principles of the Convention should override the cultural and religious background to such discrimination.

The Universal Declaration of Human Rights, in article 16, states that men and women "of full age" have the right to marry and to found a family. The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962) does not set a minimum age for marriage. It notes this in its Preamble and goes on to reaffirm that all States should take all appropriate measures to eliminate completely child marriages and the betrothal of young girls before the age of puberty. Its article 2 requires States Parties to "take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interests of the intending spouses."

As noted above, in 1994 the Committee on the Elimination of Discrimination against Women (CEDAW) made a General Recommendation on equality in marriage and family relations, which proposes that the minimum age for marriage should be 18 for both women and men. Within the Recommendation, CEDAW analyses three articles in the Convention on the Elimination of All Forms of Discrimination against Women that have special significance for the status of women in the family, as a contribution to the International Year of the Family (1994). Article 16 of the Convention requires States to take all appropriate measures

to eliminate discrimination against women in all matters relating to marriage and family relations. Paragraph 2 requires that "The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory."

CEDAW comments: "In the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, States are urged to repeal existing laws and regulations and to remove customs and practices which discriminate against and cause harm to the girl child. Article 16(2) and the provisions of the Convention on the Rights of the Child preclude States Parties from permitting or giving validity to a marriage between persons who have not attained their majority. In the context of the Convention on the Rights of the Child, 'a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier'.

"Notwithstanding this definition, and bearing in mind the provisions of the Vienna Declaration, the Committee considers that the minimum age for marriage should be 18 years for both man and woman. When men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act. According to the World Health Organization, when minors, particularly girls, marry and have children, their health can be adversely affected and their education is impeded. As a result their economic autonomy is restricted...

"Some countries provide for different ages for marriage for men and women. As such provisions assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial, these provisions should be abolished. In other countries, the betrothal of girls or undertakings by family members on their behalf is permitted. Such measures contravene not only the Convention, but also a woman's right freely to choose her partner.

"States Parties should also require the registration of all marriages whether contracted civilly or according to custom or religious law. The State can thereby ensure compliance with the Convention and establish equality between partners, a minimum age for marriage, prohibition of bigamy and polygamy and the protection of the rights of children." (Committee on the Elimination of Discrimination against Women, General Recommendation No. 21, 1994, HRI/GEN/1/Rev.8, paras. 36, 38 and 39, p. 315)

Voluntary enlistment and conscription into armed forces; participation in hostilities

Article 38 of the Convention on the Rights of the Child requires States to refrain from recruiting into their armed forces anyone who has not attained the age of 15, and, in recruiting children between the ages of 15 and 18, "to give priority to those who are oldest". In addition States Parties must "take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities". In May 2000 the United Nations General Assembly adopted the Optional Protocol to the Convention on the involvement of children in armed conflict to increase protection and the Committee encourages all States Parties to sign and ratify the Protocol without delay. The Optional Protocol entered into force in 2002. It requires States Parties to it to ensure that nobody under the age of 18 is recruited compulsorily into their armed forces and to "take all feasible measures" to ensure that under-18-year-old members of their armed forces do not take a direct part in hostilities. States must take all feasible measures to prevent recruitment and use in hostilities of children under 18 years by armed groups. States Parties to the Optional Protocol must raise "in years" the minimum age for voluntary recruitment, set at 15 in the Convention (for full discussion, see page 659).

The Committee on the Rights of the Child has commended States that have set a higher age limit on recruitment than 15 and that have ratified the Additional Protocols to the Geneva Conventions. The Committee has stated clearly that it believes there should be no involvement in hostilities and no recruitment into the armed forces of anyone under 18 years old.

Criminal responsibility

Article 40(3)(a) of the Convention on the Rights of the Child proposes "the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law".

In its General Comment No. 10 on "Children's rights in Juvenile Justice", the Committee urges States not to set the minimum age at too low a level and to continue to raise the age to an internationally acceptable level (CRC/C/GC/10, paras. 30 *et seq.*; for full discussion, see article 40, page 601). It is clear, from the Initial and Periodic

Reports of States Parties and from the reports of discussions with the Committee, that the definition of the age of criminal responsibility is often blurred. In some States, it appears, paradoxically, that children can be liable under criminal law for major offences at a younger age than they can be liable for minor offences.

The Committee has, in several cases, underlined that a minimum age must be defined in legislation. For many States, the Committee has urged that the age should be raised, and the Committee has welcomed proposals to set the age at 18. For example:

"The Committee urges the State Party to raise the minimum age of criminal responsibility and to ensure that children aged 15 to 18 years are accorded the protection of juvenile justice provisions and are not treated as adults..." *(Ethiopia CRC/C/15/Add.144, para. 29)*

"The Committee notes that the age of criminal responsibility has been raised from 7 to 10 years, but continues to be concerned that the age of criminal responsibility remains low and unclear, with different ages mentioned in various legislations.
"The Committee recommends that the State Party raise the legal age of criminal responsibility to an internationally more acceptable age by amending its legislation in this regard and ensuring that all children below 18 years are accorded the protection of juvenile justice provisions." *(Cyprus CRC/C/15/Add.205, paras. 23 and 24)*

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the "Beijing Rules", proposes in rule 4: "In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity." (For further discussion, see article 40, page 617.)

Deprivation of liberty; imprisonment

Article 37(b) requires that "no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time". While the Convention on the Rights of the Child sets no lower age limit on restriction of liberty, it is clear from the Committee's comments that it believes that the minimum age should be set in relation to the other basic principles of the Convention, and in particular to articles 2, 3 and 6; and the Committee has expressed concern at restriction of the liberty of young children. In its General Comment No. 10 on "Children's rights in Juvenile Justice", the Committee re-emphasizes the Convention's requirement that deprivation of liberty must in all circumstances only be used as a measure of last resort, and provides detailed guidance, including on pre-trial detention (CRC/C/GC/10, paras. 78 *et seq.*; for full discussion see article 37, page 547).

In article 9, the principle that a child shall only be separated from his or her parents when such separation "is necessary for the best interests of the child" places further limits on restriction of liberty away from the family.

The original *Guidelines for Periodic Reports* requests information on the minimum legal age defined in the national legislation for "Deprivation of liberty, including by arrest, detention and imprisonment, *inter alia* in the areas of administration of justice, asylum seeking and placement of children in welfare and health institutions" (CRC/C/58, para. 24; see also article 37, page 557). This emphasizes that article 37 applies to any restriction of liberty of the child, not just to that occurring within the penal system.

Capital punishment and life imprisonment

Article 37(a) of the Convention on the Rights of the Child bars the imposition of capital punishment and life imprisonment without the possibility of release for offences committed before the age of 18. In several cases, the Committee has expressed concern at breaches of this clear prohibition. In addition, the Committee has expressed concern at situations in which the law technically still allows capital punishment of those under the age of 18, although the sentence is not applied in practice, and at situations where suspended sentences of death are permitted for under-18-year-olds (see article 6, page 88 and article 37, page 554).

Giving testimony in court, in civil and criminal cases

Article 12(2) requires that the child shall have the opportunity to be heard in any judicial and administrative proceedings that affect him or her. Here again, the Convention does not suggest that a minimum age be set; the Committee seeks information on whether children below a certain age are barred from being heard in either civil or criminal cases.

Civil cases involving children include those concerned with custody and the upbringing of children, including separation from parents, adoption and so forth.

Criminal cases involving children include those in which the child gives evidence, including when the child is being prosecuted for a criminal offence; cases in which others are being prosecuted for offences against the child; and cases involving other parties when the child is a witness. In relation to children alleged as or accused of having infringed the penal law, under article 40(2)(b)(iv) they must not be compelled to give testimony.

The Committee has noted the importance of enabling children to give evidence in cases involving the prevention of violence and exploitation, including the sexual exploitation of children. It has commended States that have made special arrangements to hear evidence from children in such cases (see article 19, page 269).

In 2005 the Economic and Social Council of the United Nations adopted Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime "as a useful framework that could assist Member States in enhancing the protection of child victims and witnesses in the criminal justice system" (Economic and Social Council resolution 2005/20, 22 July 2005).

Lodging complaints and seeking redress without parental consent before a court or other authority

The Committee on the Rights of the Child has indicated that the full implementation of article 12 requires the child to have access to complaints procedures (see page 158). The child's ability to lodge complaints and seek redress without parental consent before a court is particularly important in relation to complaints concerning violence or exploitation, including sexual exploitation, within the family. There is no suggestion in the Convention that children below a certain age should not be able to lodge complaints or apply to courts or other bodies for redress, with or without parental consent; any decision to exclude a child from such rights would have to be made in the context of the general principles including non-discrimination and best interests.

Participating in administrative and judicial procedures affecting the child

As noted above, article 12(2) of the Convention on the Rights of the Child requires that the child is provided with an opportunity to be heard in any judicial and administrative proceedings affecting him or her. The Convention sets no age limit on this right (see article 12, page 153 and article 9, page 129).

Giving consent to change of identity, including change of name, modification of family relations, adoption, guardianship

Article 8 of the Convention requires respect for the right of the child to preserve his or her identity, including nationality, name and family relations. The Convention does not suggest that there should be a minimum age for recognition of this right. It appears that very few States have defined in legislation arrangements for the child's consent in relation to all aspects of changing identity.

Many States indicated in Initial Reports that they have established an age at which the child has a right to consent or refuse consent to his or her adoption. The Committee has welcomed moves to reduce the age at which the child's consent is required for adoption (see article 21, page 295).

Having access to information about the child's biological family

Article 7 of the Convention on the Rights of the Child requires that the child has "as far as possible, the right to know ... his or her parents". The right to knowledge of biological parents is of particular importance to adopted children and children born through artificial means of conception. In many States, legislation places limits both on the information made available to the child and the age at which any information is available to the child. Implementation of this right depends on sufficient information being included in the registration of the child's birth and on how the information is made accessible to the child (see article 7, page 105). In many States adopted children up to the age of 18 do not have a right of access to information about their biological parents, which the Committee has suggested breaches article 7 (see article 7, page 107).

Legal capacity to inherit, to conduct property transactions

In some States the capacity to inherit and to conduct property transactions is achieved only with majority and/or on marriage; in others, various ages are set in legislation. Where minimum ages are set, they should be consistent with the Convention's general principles, in particular of non-discrimination and the best interests of the child.

The Committee on the Elimination of Discrimination against Women (CEDAW), in a General Recommendation, notes that, in many countries, law and practice concerning inheritance and property result in serious discrimination against women: "... Women may receive a smaller share of the husband's or father's property at his death than would widowers and sons" (Committee on the Elimination of Discrimination against

Women, General Recommendation No. 21, 1994, HRI/GEN/1/Rev.8, para. 35, p. 314). Such discrimination may also affect those under 18 years old, in which case it raises an issue under the Convention on the Rights of the Child. The Committee on the Rights of the Child has commented on discrimination in inheritance (see article 2, page 31).

Legal capacity to create or join associations

The child's right to freedom of association is recognized in the Convention on the Rights of the Child under article 15, and the Committee has emphasized that this right is linked to articles 12 and 13 in realizing the child's rights to participation.

Some States indicated in their Initial Reports that there is an age below which children are not permitted to join associations or to do so without the agreement of their parents. The Convention provides no support for arbitrary limitations on the child's right to freedom of association (see article 15, page 197).

Choosing a religion; attending religious education in school

Article 14 requires respect for the child's right to freedom of thought, conscience and religion. Some States now have legislation specifically upholding the child's right to freedom of religion. In others, an age is specified when decisions concerning religious upbringing and education transfer from the parent to the child. In States in which religious education is allowed in schools, there may be provisions in legislation allowing students to opt out of particular religious teaching and/or worship, and/or giving them a right to alternative teaching. Article 14(2) requires States to respect the rights and duties of parents "to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child" (see article 14, page 188).

Consumption of alcohol and other controlled substances

Article 33 requires States to take "all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties…" Many States have made it an offence to sell alcohol and tobacco products and any other controlled substances to children below a certain age. The setting of such ages should be related to the basic principles of articles 2, 3 and 6 (see article 33, page 503).

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 1, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (definition of the child in article 1 is relevant to **all government departments**)
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be a part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 1 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 1 likely to include the **training of all those working with or for children, and education for parenting**)?

• Specific issues in implementing article 1

Does the State define childhood for the purposes of the Convention as beginning

- ☐ at birth?
- ☐ for some purposes before birth?

☐ Does a child acquire all adult rights by his or her 18th birthday or earlier?

Do all children acquire the right to vote and to stand for election

- ☐ at 18?
- ☐ before 18?

Are protective minimum ages, compatible with the general principles of non-discrimination and best interests, defined in legislation for the following:

- ☐ beginning and end of compulsory education?
- ☐ admission to employment, including
  - ☐ hazardous work?
  - ☐ part-time work?
  - ☐ full-time work?

How to use the checklist, *see page XIX*

- ☐ giving a valid consent to sexual activities?
- ☐ access to certain categories of violent/pornographic media?
- ☐ buying/consuming alcohol or other controlled substances?
- ☐ voluntary enlistment in the armed forces?
- ☐ criminal responsibility?
- ☐ deprivation of liberty in any situation, including in the juvenile justice system;immigration, including asylum seeking; and in education, welfare and health institutions?

☐ Are capital punishment and life imprisonment prohibited for offences committed below the age of 18?

☐ Is the minimum age for marriage 18 for both girls and boys?

☐ Is conscription into the armed forces prohibited below the age of 18?

☐ Does the State take all feasible measures to ensure that under-18-year-olds do not take a direct part in hostilities?

☐ Is any general principle established in legislation that once a child has acquired "sufficient understanding", he or she acquires certain rights of decision-making?

☐ Are there mechanisms for assessing the capacity/competence of a child?

☐ Can a child appeal against such assessments?

☐ Are there other ways in which legislation respects the concept of the child's "evolving capacities"?

Do children acquire rights, either at prescribed ages, or in defined circumstances, for

- ☐ having medical treatment or surgery without parental consent?
- giving testimony in court
  - ☐ in civil cases?
  - ☐ in criminal cases?
- ☐ leaving home without parental consent?
- ☐ choosing residence and contact arrangements when parents separate?
- ☐ acquiring a passport?
- ☐ lodging complaints and seeking redress before a court or other relevant authority without parental consent?
- ☐ participating in administrative and judicial proceedings affecting the child?
- ☐ giving consent to change of identity, including
  - ☐ change of name?
  - ☐ nationality?
  - ☐ modification of family relations?
  - ☐ adoption?
  - ☐ guardianship?
- ☐ having access to information concerning his or her biological origins (e.g. in cases of adoption, artificial forms of conception, etc.)?
- ☐ having legal capacity to inherit?
- ☐ conducting property transactions?
- ☐ creating and joining associations?

How to use the checklist, *see page XIX*

- ☐ choosing a religion?
- ☐ choosing to attend/not attend religious education in school?
- ☐ joining a religious community?
- ☐ Where such minimum ages are defined in legislation, have they been reviewed in the light of the Convention's basic principles, in particular of non-discrimination, best interests of the child and right to maximum survival and development (articles 2,3 and 6)?

☐ Do the legal provisions relating to the attainment of majority, acquisition of specific rights at a particular age or set minimum ages, as mentioned above, apply to all children without discrimination on any ground?

Reminder: **The Convention is indivisible and its articles are interdependent. The definition of the child in article 1 is relevant to the implementation of each article of the Convention.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 1 include:

Article 5: respect for the child's "evolving capacities" (also article 14(2))
Article 24: access to medical advice and counselling; consent to treatment
Article 28: ages for compulsory education
Article 32: setting of ages for admission to employment
Article 34: age of sexual consent
Article 37: no capital punishment or life imprisonment for offences committed below the age of 18
Article 38: minimum age for recruitment into armed forces and participation in hostilities
Article 40: age of criminal responsibility
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

UNICEF/DOI93-1185/Horner

Non-discrimination

Text of Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

The first paragraph of article 2, along with article 3(2) and article 4, sets out the fundamental obligations of States Parties in relation to the rights outlined in the remainder of the Convention on the Rights of the Child – to "respect and ensure" all the rights in the Convention to all children in their jurisdiction without discrimination of any kind. "Non-discrimination" has been identified by the Committee on the Rights of the Child as a general principle of fundamental importance for implementation of the whole Convention. In a number of General Comments, the Committee has set out the implications of applying the principle in relation to various issues and groups of children. The Committee has emphasized the importance of collecting disaggregated data in order to monitor the extent of discrimination.

In a relevant General Comment, the Human Rights Committee proposes that the term "discrimination" 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".

The non-discrimination principle does not bar affirmative action, the legitimate differentiation in treatment of individual children; a Human Rights Committee General Comment emphasizes that States will often have to take affirmative action to diminish or eliminate conditions that cause or help to perpetuate discrimination. In its Preamble, the Convention on the Rights of the Child recognizes that "in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration…" In this respect, the Committee on the Rights of the Child has

Summary

consistently underlined the need to give special attention to disadvantaged and vulnerable groups.

The implications of discrimination in relation to particular rights of the child are covered in this *Implementation Handbook* under the other corresponding Convention articles. Certain articles set out special provisions for children particularly prone to forms of discrimination, for example, children with disabilities (article 23), and refugee children (article 22). Because discrimination is at the root of various forms of child exploitation, other articles to protect the child call for action that involves challenging discrimination.

Paragraph 2 of article 2 asserts the need to protect children from all forms of discrimination or punishment on the basis of the status or activities of their parents and others close to them. ■

Definition of "discrimination"

The term "discrimination" is not defined in the Convention, nor is it defined in the International Covenant on Civil and Political Rights, which includes a similar non-discrimination principle. The Committee on the Rights of the Child has asserted the fundamental importance of article 2 and raises the issue of non-discrimination in its consideration of each State Party report. The Committee has not, as at June 2007, issued any interpretative General Comment on article 2. But other General Comments have expanded on the theme of discrimination in relation to their particular subject-matter. In its General Comment No. 5 on "General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)", the Committee notes in relation to article 2:

"This non-discrimination obligation requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures. For example, the Committee highlights, in particular, the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified. Addressing discrimination may require changes in legislation, administration and resource allocation, as well as educational measures to change attitudes. It should be emphasized that the application of the non-discrimination principle of equal access to rights does not mean identical treatment." *(Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, para. 12)*

In its first General Comment on "The aims of education", the Committee explores discrimination in the overall context of education:

"Discrimination on the basis of any of the grounds listed in article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities. While denying a child's access to educational opportunities is primarily a matter which relates to article 28 of the Convention, there are many ways in which failure to comply with the principles contained in article 29(1) can have a similar effect. To take an extreme example, gender discrimination can be reinforced by practices such as a curriculum which is inconsistent with the principles of gender equality, by arrangements which limit the benefits girls can obtain from the educational opportunities offered, and by unsafe or unfriendly environments which discourage girls' participation. Discrimination against children with disabilities is also pervasive in many formal educational systems and in a great many informal educational settings, including in the home. Children with HIV/AIDS are also heavily discriminated against in both settings. All such discriminatory practices are in direct contradiction with the requirements in article 29(1)(a) that education be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential." *(Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 10)*

The General Comment also underlines, in particular, the importance of education in combating racism:

"Racism and related phenomena thrive where there is ignorance, unfounded fears of racial, ethnic, religious, cultural and linguistic or other forms of difference, the exploitation of prejudices, or the teaching or dissemination of distorted values. A reliable and enduring antidote to all of these failings is the provision of education which promotes an understanding and appreciation of the values reflected in article 29(1), including respect for differences, and challenges all aspects of discrimination and prejudice. Education should thus be accorded one of the highest priorities in all campaigns against the evils of racism and related phenomena." *(Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 11; see also article 29, page 447.)*

In its General Comment No. 7 on "Implementing child rights in early childhood", the Committee urges States Parties to identify the implications of the non-discrimination principle for realizing rights in early childhood:

"Article 2 means that young children in general must not be discriminated against on

any grounds, for example where laws fail to offer equal protection against violence for all children, including young children. Young children are especially at risk of discrimination because they are relatively powerless and depend on others for the realization of their rights.
"Article 2 also means that particular groups of young children must not be discriminated against. Discrimination may take the form of reduced levels of nutrition; inadequate care and attention; restricted opportunities for play, learning and education; or inhibition of free expression of feelings and views. Discrimination may also be expressed through harsh treatment and unreasonable expectations, which may be exploitative or abusive..." *(Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 11)*

The Committee goes on to give some illustrative examples (see box, page 20). It also expresses concern about discrimination in access to services:

"Potential discrimination in access to quality services for young children is a particular concern, especially where health, education, welfare and other services are not universally available and are provided through a combination of state, private and charitable organizations... As a first step, the Committee encourages States Parties to monitor the availability of and access to quality services that contribute to young children's survival and development, including through systematic data collection, disaggregated in terms of major variables related to children's and families' background and circumstances. As a second step, actions may be required that guarantee that all children have an equal opportunity to benefit from available services. More generally, States Parties should raise awareness about discrimination against young children in general, and against vulnerable groups in particular." *(Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 12)*

(See also General Comment No. 3 on "HIV/AIDS and the rights of the child", paras. 7 to 9, see page 364; General Comment No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child", para. 6, see page 368; General Comment No. 9 on "The rights of children with disabilities", paras. 8 to 10, see page 329. For full text of General Comments see www.ohchr.org/english/bodies/crc/comments.htm.)

The Human Rights Committee, which oversees the International Covenant on Civil and Political Rights, issued a General Comment in 1989 which notes definitions of discrimination in other human rights instruments and proposes a general definition.

Under article 2 of the International Covenant on Civil and Political Rights, "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, 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."

Article 24(1) of the Covenant also requires that "Every 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..."

And the Covenant's article 26 states: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

The Human Rights Committee, in its 1989 General Comment, emphasizes that "non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights". The Human Rights Committee notes that "the 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".

The Human Rights Committee quotes article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination and article 1 of the Convention on the Elimination of All Forms of Discrimination against Women which use a similar definition.

The Human Rights Committee goes on to emphasize that the "enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance". The principle of

Discrimination in early childhood

In its General Comment No. 7 on "Implementing child rights in early childhood", the Committee provides examples of the forms that discrimination can take:

- "Discrimination against girl children is a serious violation of rights, affecting their survival and all areas of their young lives as well as restricting their capacity to contribute positively to society. They may be victims of selective abortion, genital mutilation, neglect and infanticide, including through inadequate feeding in infancy. They may be expected to undertake excessive family responsibilities and deprived of opportunities to participate in early childhood and primary education;
- Discrimination against children with disabilities reduces survival prospects and quality of life. These children are entitled to the care, nutrition, nurturance and encouragement offered other children. They may also require additional, special assistance in order to ensure their integration and the realization of their rights;
- Discrimination against children infected with or affected by HIV/AIDS deprives them of the help and support they most require. Discrimination may be found within public policies, in the provision of and access to services, as well as in everyday practices that violate these children's rights…;
- Discrimination related to ethnic origin, class/caste, personal circumstances and lifestyle, or political and religious beliefs (of children or their parents) excludes children from full participation in society. It affects parents' capacities to fulfil their responsibilities towards their children. It affects children's opportunities and self-esteem, as well as encouraging resentment and conflict among children and adults;
- Young children who suffer multiple discrimination (e.g., related to ethnic origin, social and cultural status, gender and/or disabilities) are especially at risk.
- Young children may also suffer the consequences of discrimination against their parents, for example if children have been born out of wedlock or in other circumstances that deviate from traditional values, or if their parents are refugees or asylum seekers.

"States Parties have a responsibility to monitor and combat discrimination in whatever forms it takes and wherever it occurs – within families, communities, schools or other institutions…"

(Committee on the Rights of the Child, General Comment No. 7, "Implementing child rights in early childhood", 2005, CRC/C/GC/7/Rev.1, paras. 11 and 12)

equality sometimes requires States Parties "to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant." And finally, it states that "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant". (Human Rights Committee, General Comment No. 18, 1989, HRI/GEN/1/Rev.8, paras. 7 to 13, pp. 187 and 188)

In relation to discrimination against children and the Covenant, another Human Rights Committee General Comment, also issued in 1989, states: "The Covenant requires that children should be protected against discrimination on any grounds such as race, colour, sex, language, religion, national or social origin, property or birth. In this connection, the Committee notes that, whereas non-discrimination in the enjoyment of the rights provided for in the Covenant also stems, in the case of children, from article 2 and their equality before the law from article 26, the non-discrimination clause contained in article 24 relates specifically to the measures of protection referred to in that provision. Reports by States Parties should indicate how legislation and practice ensure that measures of protection are aimed at removing all discrimination in every field, including inheritance, particularly as between children who are nationals and children who are aliens, or as between legitimate children and children born out of wedlock." (Human Rights Committee, General Comment No. 17, 1989, HRI/GEN/1/Rev.8, para. 5, p. 186)

"States Parties shall respect and ensure the rights set forth in the present Convention..."

The language of article 2 and its interpretation by the Committee on the Rights of the Child emphasize that the obligation of States Parties to prevent discrimination is an active one, requiring, like other aspects of implementation, a range of measures that include review, strategic planning, legislation, monitoring, awareness-raising, education and information campaigns, and evaluation of measures taken to reduce disparities.

A commentary published in the *Bulletin of Human Rights* asserts that in terms of international law, the obligation "to respect" requires States "to refrain from any actions which would violate any of the rights of the child under the Convention... The obligation 'to ensure' goes well beyond that of 'to respect', since it implies an affirmative obligation on the part of the State to take whatever measures are necessary to enable individuals to enjoy and exercise the relevant rights" (Philip Alston, 'The legal framework of the Convention on the Rights of the Child', *Bulletin of Human Rights*, 91/2, p. 5).

An "active" approach to implementing the principle

The Committee on the Rights of the Child has constantly stressed the need for an "active" approach to implementation and in particular to non-discrimination. It underscored this point in its comments on the first Initial Report submitted to it, in 1993:

"The Committee emphasizes that the principle of non-discrimination, as provided for under article 2 of the Convention, must be vigorously applied, and that a more active approach should be taken to eliminate discrimination against certain groups of children, most notably girl children." (Bolivia CRC/C/15/Add.1, para. 14)

The implementation of article 2 must be integrated into the implementation of all other articles – ensuring that all the rights mentioned are available to all children without discrimination of any kind.

Reviewing legislation and writing non-discrimination principle into legislation

In its General Comment No. 5 on "General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)", the Committee

"... emphasizes, in particular, the importance of ensuring that domestic law reflects the identified general principles in the Convention (arts. 2, 3, 6, and 12). The Committee welcomes the development of consolidated children's rights statutes, which can highlight and emphasize the Convention's principles. But the Committee emphasizes that it is crucial in addition that all relevant 'sectoral' laws (on education, health, justice and so on) reflect consistently the principles and standards of the Convention." (Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, para. 22)

The Committee has indicated also in Concluding Observations on many States' reports that, as with the other articles identified as general principles, the non-discrimination principle should be written into legislation and that all the possible grounds for discrimination spelled out in article 2 should be reflected in the legislation. And it has emphasized that there should be the possibility to challenge discrimination before the courts.

In some States, a non-discrimination clause is written into the constitution and therefore applies to all children. In others, non-discrimination principles are included in human rights legislation with reference to children. The Convention, like other human rights instruments, does not require States to have a constitution. But where there is a constitution, its provisions must be consistent with the Convention, or, in the terms of article 41, must be more conducive to the realization of the rights of the child.

The Committee has also emphasized the need for States to review their constitutions and all existing legislation to ensure that these do not involve discrimination; often, in the same comments, the Committee has drawn attention to particular examples of existing discrimination. For example:

"The Committee is concerned about discriminatory attitudes towards certain groups of children such as disabled children, refugee and IDPs' [internally displaced persons'] children, street children and children infected with HIV/AIDS.
"In accordance with article 2 of the Convention, the Committee recommends that the State Party increase its efforts to adopt a proactive and comprehensive strategy to eliminate discrimination on any grounds against all vulnerable groups throughout the country." (Azerbaijan CRC/C/AZE/CO/2, paras. 24 and 25)

"The Committee notes with appreciation that article 7 of the Constitution of Lebanon promotes the principle of non-discrimination. However, it notes with concern that the Constitution and domestic laws guarantee

the equal status only to Lebanese children but leave, for example, foreign children and refugee and asylum-seeking children without such protection. It is concerned at the persistent de facto *discrimination faced by children with disabilities, the aforementioned foreign, refugee and asylum-seeking children, Palestinian children, children living in poverty, children in conflict with the law and children living in rural areas, especially with regard to their access to adequate social and health services and educational facilities. The Committee also notes with concern the reports of the expressions of racial discrimination and xenophobia in the State Party.*

"The Committee recommends that the State Party strengthen its efforts to eliminate discrimination against children with disabilities, foreign, refugee and asylum-seeking children, Palestinian children, children living in poverty, children in conflict with the law and children living in rural areas and other vulnerable groups by:

(a) Reviewing domestic laws with a view to ensure that children in the Lebanese territory shall be treated equally and as individuals;

(b) Ensuring that these children have equal access to health and social services and to quality education and that services used by these children are allocated sufficient financial and human resources;

(c) Enhancing monitoring of programmes and services implemented by local authorities with a view to identifying and eliminating disparities; and

(d) Preventing racial discrimination and xenophobia targeting certain foreigner groups, including refugee and asylum-seeking children." *(Lebanon CRC/C/LBN/CO/3, paras.27 and 28)*

In examining Initial and Periodic Reports the Committee frequently comes across instances in which some forms of discrimination are written into existing legislation. A particularly common example of discrimination by gender is legislation defining different minimum ages for boys and girls to marry (for further discussion, see below, pages 28 and 29 and article 1, page 8); another example is the discrimination inherent in some state legislation dealing with children of married parents and those born out of marriage, referred to as non-marital children (see below, page 24). Policies intended to discourage population growth by limiting the size of families must not discriminate against individual children:

"In the light of article 2 of the Convention, the Committee recommends that the State Party find alternative means to implement the three child policy, other than excluding the fourth child from social service benefits, and ensure that all children have equal access to such assistance without discrimination." *(The former Yugoslav Republic of Macedonia CRC/C/15/Add.118, para. 17)*

In 2002, the Committee held a Day of General Discussion on the theme "The private sector as service provider and its role in implementing child rights". Recommendations adopted by the Committee following the Day emphasized the importance of the non-discrimination principle in any process of privatization. The State continues to be bound by its obligations under the Convention, even when the provision of services is delegated to non-state actors:

"... For instance, privatization measures may have a particular impact on the right to health (art. 24) and the right to education (arts. 28 and 29), and States Parties have the obligation to ensure that privatization does not threaten accessibility to services on the basis of criteria prohibited, especially under the principle of non-discrimination..." *(Committee on the Rights of the Child, Report on the thirty-first session, September/October 2002, CRC/C/121, page 153)*

The Committee has emphasized that the principle of non-discrimination applies equally to private institutions and individuals as well as to the State, and that this must be reflected in legislation:

"The Committee notes with concern that ... the principle of non-discrimination does not apply to private professionals or institutions..." *(Zimbabwe CRC/C/15/Add.55, para. 12)*

Other active measures to challenge discrimination

The Committee on the Rights of the Child recognizes that the reflection of the principle of non-discrimination in the law, while fundamental to implementation, is not in itself sufficient; other strategies are needed to implement the principle, in particular to challenge traditional and other discriminatory attitudes and customs. The Committee has identified traditional attitudes and customs that perpetuate discrimination in many societies, whether the discrimination is reflected in legislation or not. For example:

"The Committee recommends that the State Party make greater efforts to ensure that all children within its jurisdiction enjoy without discrimination, all the rights set out in the Convention, including through public education programmes and the eradication of social misconceptions, in accordance with article 2;..." *(Niger CRC/C/15/Add.179, para. 28. See also, for example, El Salvador CRC/C/15/Add.9, para. 12; Jamaica CRC/C/15/Add.32, para. 11; Bangladesh CRC/C/15/Add.74, paras. 15 and 35; and India CRC/C/15/Add.115, para. 31.)*

In comments on reports, the Committee has proposed various forms of action, including:

- studies of discrimination – the Committee emphasizes frequently the importance of collecting disaggregated statistics and other information in order to identify discrimination in access to rights (see article 4, page 64, for details);
- development of comprehensive strategies;
- information and awareness-raising campaigns, including public campaigns to challenge discriminatory attitudes and practices – a "comprehensive and integrated public information campaign";
- involvement of political, religious and community leaders in influencing attitudes and discouraging discrimination.

Implementation "irrespective of budgetary constraints"

The Committee has emphasized that implementation of the general principles in articles 2 and 3 of the Convention must not be "made dependent on budgetary constraints". In practice, poverty is clearly a major cause of discrimination affecting children. The Committee's intention is to ensure that non-discrimination and the best interests of children are primary considerations in setting budgets and allocating available resources. The Committee consistently emphasizes the need for affirmative action – positive discrimination – on behalf of disadvantaged and vulnerable groups. For example:

"The Committee recommends that the State Party pay particular attention to the implementation of article 4 of the Convention by increasing and prioritizing budgetary allocations to ensure at all levels the implementation of the rights of the child and that particular attention is paid to the protection of the rights of children belonging to vulnerable groups including children with disabilities, children affected or/and infected by HIV/AIDS, street children and children living in poverty..." *(Ghana CRC/C/GHA/CO/2, para. 18)*

Monitoring and evaluation

It is essential to monitor the realization of all rights within the Convention for all children, without discrimination. Thus the monitoring process and the indicators used must be sensitive to the various issues specifically mentioned in the article: race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. As the wording indicates, the list is not exhaustive but merely illustrative, and States must consider other grounds that might cause discrimination. The *Guidelines for Periodic Reports (Revised 2005)* requests disaggregated data under many articles, for example by age, gender, region, rural/urban area, social and ethnic origin (see article 4, page 64). The purpose is to ensure that States Parties have sufficient information to judge whether there is discrimination in implementing the article or provision concerned.

The consideration of the implications of each and every article must include the consideration of possible discrimination against individual children or groups of children. Article 2 highlights the "double jeopardy" many children face, discriminated against not only on the grounds of their age and status but also on other specific grounds such as their sex or race or disability.

"... to each child within their jurisdiction..."

Article 2 emphasizes that all the rights in the Convention on the Rights of the Child must apply to all children in the State, including visitors, refugees, children of migrant workers and those in the State illegally. In General Comment No. 6 on "Treatment of unaccompanied and separated children outside their country of origin", the Committee states:

"... the principle of non-discrimination, in all its facets, applies in respect to all dealings with separated and unaccompanied children. In particular, it prohibits any discrimination on the basis of the status of a child as being unaccompanied or separated, or as being a refugee, asylum seeker or migrant. This principle, when properly understood, does not prevent, but may indeed call for, differentiation on the basis of different protection needs such as those deriving from age and/or gender. Measures should also be taken to address possible misperceptions and stigmatization of unaccompanied or separated children within society..." *(Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, para. 18)*

In States with semi-autonomous provinces and territories, the Committee has stressed that differences in legislation or other factors must not cause discrimination in the enjoyment of the rights in the Convention for children depending on where they live.

In discussions with Canadian Government representatives, a Committee member stated that "... under article 2 States Parties were required to 'respect and ensure' the rights of children under the terms of the Convention, irrespective of factors such as race, sex, or 'other status'. He took

that as implying that the Federal Government was obliged to ensure that equal protection was given to the rights of children in all the different provinces and territories. The Committee had been entrusted with the task of monitoring progress made by States Parties in the implementation of the Convention and was therefore obliged to ensure that the Convention was applied throughout Canada, irrespective of regional differences." (Canada CRC/C/SR.214, para. 45)

The Committee commented to Canada, and similarly to other States:

"Disparities between provincial or territorial legislation and practices which affect the implementation of the Convention are a matter of concern to the Committee. It seems, for instance, that the definition of the legal status of the children born out of wedlock being a matter of provincial responsibility may lead to different levels of legal protection of such children in various parts of the country." *(Canada CRC/C/15/Add.37, para. 9)*

The Committee followed this up again when it examined Canada's Second Report:

"The Committee urges the Federal Government to ensure that the provinces and territories are aware of their obligations under the Convention and that the rights in the Convention have to be implemented in all the provinces and territories through legislation and policy and other appropriate measures." *(Canada CRC/C/15/Add.215, para. 9)*

States with "dependent" territories are advised to ensure that the Convention is extended to all of them:

"The Committee notes with concern that the State Party has not yet extended the Convention to all of its Crown Dependencies, specifically Jersey and Guernsey.
"The Committee recommends that the State Party submits in its next periodic report, information concerning the measures taken to extend the Convention to all of its Crown Dependencies." *(United Kingdom – Isle of Man CRC/C/15/Add.134, paras. 4 and 5)*

The Committee has also noted more general discrimination existing between regions within a State, which is not caused by legislative differences.

"... without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status"

The grounds for discrimination specifically mentioned in article 2 of the Convention on the Rights of the Child are similar to those stated in the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (article 2 in each Covenant), with the addition of ethnic origin and disability.

The Committee has raised concerns where a State's constitution or domestic legislation does not bar discrimination on all the grounds listed in article 2:

"The Committee ... remains concerned that some of the criteria listed as prohibited grounds of discrimination under the Convention on the Rights of the Child are absent from the State Party constitution.
"The Committee recommends that the State Party review the Constitution and other relevant national legal instruments, enlarging the list of prohibited grounds of discrimination

Grounds for discrimination against children

The following grounds for discrimination and groups affected by discrimination have been identified by the Committee in its examination of Initial and Periodic Reports (they are listed in no particular order of significance):

- gender
- disability
- race, xenophobia and racism
- ethnic origin
- sexual orientation
- particular castes, tribes
- "untouchability"
- language

children not registered at birth
children born a twin
children born on an unlucky day
children born in the breech position
children born in abnormal conditions
a "one-child" or "three-child" policy
orphans
place of residence
    distinctions between different provinces/territories/states, etc.
    rural (including rural exodus)
    urban
    children living in slums
    children in remote areas and remote islands
    displaced children
    homeless children
    abandoned children
    children placed in alternative care
        ethnic minority children placed in alternative care
    institutionalized children
    children living and/or working in the streets
children involved in juvenile justice system
    in particular, children whose liberty is restricted
children affected by armed conflict
working children
children subjected to violence
child beggars
children affected by HIV/AIDS
children of parents with HIV/AIDS
young single mothers
minorities, including
    Roma children/gypsies/travellers/nomadic children
    children of indigenous communities
non-nationals, including
    immigrant children
    illegal immigrants
    children of migrant workers
    children of seasonal workers
    refugees/asylum seekers
        including unaccompanied refugees
children affected by natural disasters
children living in poverty/extreme poverty
unequal distribution of national wealth
social status/social disadvantage/social disparities
children affected by economic problems/changes
economic status of parents causing racial segregation at school
parental property
parents' religion
religion-based personal status laws
non-marital children (children born out of wedlock)
children of single-parent families
children of incestuous unions
children of marriages between people of different ethnic/religious groups or nationalities

to include 'disability, birth, other [than political] opinion', as provided for in article 2 of the Convention." (Sierra Leone CRC/C/15/Add.116, paras. 30 and 31)

The Committee has identified numerous grounds for discrimination, not specified in article 2, in its examination of States Parties' reports (see box), including, for example, sexual orientation:

"... concern is expressed at the insufficient efforts made to provide against discrimination based on sexual orientation. While the Committee notes the Isle of Man's intention to reduce the legal age for consent to homosexual relations from 21 to 18 years, it remains concerned about the disparity that continues to exist between the ages for consent to heterosexual (16 years) and homosexual relations.
"It is recommended that the Isle of Man take all appropriate measures, including of a legislative nature, to prevent discrimination based on the grounds of sexual orientation and to fully comply with article 2 of the Convention." (United Kingdom – Isle of Man CRC/C/15/Add.134, paras. 22 and 23. See also United Kingdom – Overseas Territories CRC/C/15/Add.135, paras. 25 and 26.)

The Committee also raises discrimination on grounds of sexual orientation in the context of HIV/AIDS, in its General Comment No. 3 on "HIV/AIDS and the rights of the child":

"Of concern also is discrimination based on sexual orientation. In the design of HIV/AIDS-related strategies, and in keeping with their obligations under the Convention, States Parties must give careful consideration to prescribed gender norms in their societies with a view to eliminating gender-based discrimination as these norms impact on the vulnerability of both girls and boys to HIV/AIDS." (Committee on the Rights of the Child, General Comment No. 3, 2003, CRC/GC/2003/3, para. 8)

The Committee also notes in the General Comment that it interprets "other status" under article 2 to include HIV/AIDS status of the child or his/her parents (para. 9). It goes on to recommend that States Parties should

"... review existing laws or enact new legislation with a view to implementing fully article 2 of the Convention, and in particular to expressly prohibiting discrimination based on real or perceived HIV/AIDS status so as to guarantee equal access for all children to all relevant services..." (CRC/GC/2003/3, para. 40(c))

Other Convention articles highlight groups of children who may suffer particular forms of discrimination, for example children without families (article 20), refugee children (article 22), children with disabilities (article 23), children of minorities or indigenous communities (article 30), children suffering economic and other exploitation (articles 32, 34, 36), children involved in the juvenile justice system and children whose liberty is restricted (articles 37 and 40), and children in situations of armed conflict (article 38).

In recommendations issued following its Day of General Discussion on "The rights of indigenous children" in 2003, the Committee calls on States Parties

"... to implement fully article 2 of the Convention and take effective measures, including through legislation, to ensure that indigenous children enjoy all of their rights equally and without discrimination, including equal access to culturally appropriate services including health, education, social services, housing, potable water and sanitation".
(Committee on the Rights of the Child, Report on the thirty-fourth session, September/October 2003, CRC/C/133, p. 134

The Committee also calls for education and training for relevant professionals working with and for indigenous children on the Convention and the rights of indigenous peoples. It also recommends the development of awareness-raising campaigns, with the full participation of indigenous communities and children, including through the mass media, to combat negative attitudes towards and misperceptions about indigenous peoples (CRC/C/133, p. 134).

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban (South Africa) in August 2001, provides a new global agenda to challenge discrimination on such grounds (A/CONF.189/12. See box, opposite). As one contribution to preparations for the Conference, the Committee drafted its first General Comment on "The aims of education" (see article 29, page 439). In its Concluding Observations, the Committee asks States to provide in their next Periodic Report information on measures and programmes, relevant to the Convention, undertaken by the State Party in order to follow up the Durban Declaration and Programme of Action.

Legitimate forms of discrimination

As indicated above (page 22), the bar on discrimination of any kind does not outlaw legitimate differentiation between children in implementation – for example to respect the "evolving capacities" of children and to give priority, "special consideration" or affirmative action to children living in exceptionally difficult conditions.

World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

The Declaration and Programme of Action of the World Conference (Durban, South Africa, September 2001) notes with concern the large number of children and young people, particularly girls, among the victims of racism, racial discrimination, xenophobia and related intolerance and goes on to stress "the need to incorporate special measures, in accordance with the principle of the best interests of the child and respect for his or her views, in programmes to combat racism, racial discrimination, xenophobia and related intolerance, in order to give priority attention to the rights and the situation of children and young people who are victims of these practices" (Declaration, para. 72).

The Declaration and Programme of Action cover many issues relevant to children's rights, including: the rights of children belonging to ethnic, religious or linguistic minorities or who are indigenous; victims of trafficking; links between child labour and poverty and racial discrimination; the influence on children and young people of new information technologies when used to propagate racism, and so on.

The Declaration underlines "the links between the right to education and the struggle against racism, racial discrimination, xenophobia and related intolerance and the essential role of education, including human rights education and education which is sensitive to and respects cultural diversity, especially amongst children and young people, in the prevention and eradication of all forms of intolerance and discrimination" (Declaration, para. 97).

The Programme of Action makes detailed recommendations for education, urging States to commit themselves to ensuring access without discrimination to education, including access to free primary education for all children, both girls and boys. States should ensure equal access to education for all in law and in practice, and refrain from any legal or other measures leading to imposed racial segregation in access to schooling (Programme of Action, paras. 121 and 122).

The Programme urges States "to encourage the full and active participation of, as well as involve more closely, youth in the elaboration, planning and implementation of activities to fight racism, racial discrimination, xenophobia and related intolerance", calling upon States, in partnership with non-governmental organizations and other sectors of society, to facilitate both national and international youth dialogue on these issues. States are urged to encourage and facilitate the establishment and maintenance of youth mechanisms to combat racism (Programme of Action, paras. 216 and 217).

(Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, South Africa, 21 August – 8 September 2001, A/CONF.189/12)

The Convention's Preamble recognizes that "in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration". Inevitably, the category of children living in exceptionally difficult conditions includes children with widely different problems requiring widely different remedies. The situation of such children is best defined in terms of discrimination in the realization and enjoyment of various rights in the Convention.

The Committee on the Rights of the Child has consistently commented on the need to identify the most vulnerable and disadvantaged children in a State, has expressed concern about their situation and has recommended action to ensure that such children enjoy their rights under the Convention.

Discrimination against girls

The Committee has paid particular attention to the issue of discrimination against girls and frequently expresses concern about persisting discrimination in its successive Concluding Observations.

The Committee held a Day of General Discussion on "The girl child", in January 1995, intended to prepare the contribution of the Committee to the Fourth World Conference on Women: Action for Equality, Development and Peace, held at Beijing, in September 1995. A recommendation adopted by the Committee, on "Participation and contribution" to the Beijing Conference, reaffirmed:

"... the importance of the Convention on the Rights of the Child and of its implementation process in decisively improving the situation of girls around the world and ensuring the full realization of their fundamental rights".

The Committee recalled that the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women

"... have a complementary and mutually reinforcing nature",

and recommended that

"... they should be an essential framework for a forward-looking strategy to promote and protect the fundamental rights of girls and women and decisively eradicate inequality and discrimination." *(Committee on the Rights of the Child, Report on the eighth session, January 1995, CRC/C/38, p. 3)*

The General Discussion report notes that, because the Convention on the Rights of the Child is the most widely ratified human rights instrument,

"... it was undoubtedly also the most widely accepted framework for action in favour of the fundamental rights of girls. There was an undeniable commitment on the part of the international community to use the provisions of the Convention as an agenda for action to identify persisting forms of inequality and discrimination against the girl child, to abolish practices and traditions detrimental to the enjoyment of their rights and to define a real forward-looking strategy to promote and protect those rights."

The General Discussion report states:

"Addressing the questions of inequality and discrimination on the basis of gender did not imply that they had to be seen in a complete isolation, as if girls were a special group entitled to special rights. In fact, girls are simply human beings who should be seen as individuals and not just as daughters, sisters, wives or mothers, and who should fully enjoy the fundamental rights inherent to their human dignity... Within the larger movement for the realization of women's rights, history had clearly shown that it was essential to focus on the girl child in order to break down the cycle of harmful traditions and prejudices against women. Only through a comprehensive strategy to promote and protect the rights of girls, starting with the younger generation, would it be possible to build a shared and lasting approach and a wide movement of advocacy and awareness aimed at promoting the self-esteem of women and allowing for the acquisition of skills which will prepare them to participate actively in decisions and activities affecting them. Such an approach must be based on the recognition of human rights as a universal and unquestionable reality, free from gender bias...."

The Committee noted that in its Concluding Observations it had recommended:

"... that a comprehensive strategy be formulated and effectively implemented to create awareness and understanding of the principles and provisions of the Convention; launch educational programmes to eradicate all forms of discrimination against the girl child; and encourage the participation of all segments of society, including non-governmental organizations. In this connection, the Committee had further suggested that customary, religious and community leaders may be systematically involved in the steps undertaken to overcome the negative influences of traditions and customs."

Other recommendations the Committee noted included:

- ensuring girls effective access to the educational and vocational system, to enhance their rate of school attendance and reduce the drop-out rate;
- eliminating stereotypes in educational materials and in training all those involved in the educational system about the Convention;
- incorporating the Convention in school and training curricula;
- eradicating degrading and exploitative images of girls and women in the media and advertising.

The Committee also noted that

"... legislative measures send a formal message that traditions and customs contrary to the rights of the child will no longer be accepted, create a meaningful deterrent and clearly contribute to changing attitudes. The Committee had often recommended, in the light of article 2 of the Convention, that national legislation of States Parties should clearly recognize the principle of equality before the law and forbid gender discrimination, while providing for effective protection and remedies in case of non-respect. There was also a need to reflect in the legislation the prohibition of harmful traditional practices, such as genital mutilation and forced marriage, and any other form of violence against girls, including sexual abuse. "The Committee had also identified certain areas where law reform should be undertaken, in both the civil and penal spheres, such as the minimum age for marriage and the linking of the age of criminal responsibility to the attainment of puberty."

The Committee expressed concern at the situation of specific vulnerable groups of girls, including those affected by armed conflict and refugee children:

"In view of the prevailing circumstances of emergency surrounding them, such girls do not really have any time to enjoy their childhood, and the traditional inferiority affecting girls' lives is seriously aggravated. Sexual violence and abuse and economic exploitation often occur, education is not perceived as a priority when urgent basic needs must be met, forced and early marriage is seen as a protective measure. And although dramatically affected by emergency situations, girls often cannot voice their fear and insecurity or share their hopes and feelings."

There was further concern about the situation of working girls:

"Girls below the age of 15 often do the same household work as adult women; such labour is not regarded as 'real work' and is therefore never reflected in the statistical data. To free girls from this cycle they must have the equal chances and equal treatment, with special emphasis on education."

The General Discussion concluded that there was an urgent need to gather gender-disaggregated data,

"... in a comprehensive and integrated manner, at the international, regional, national and local levels, with a view to assessing the prevailing reality affecting girls, identifying persisting problems and challenging the prevalence of invisibility, which in turn allows for the perpetuation of vulnerability". *(Committee on the Rights of the Child, Report on the eighth session, January 1995, CRC/C/38, pp. 47-52)*

The Platform for Action unanimously adopted by representatives from 189 countries at the Fourth World Conference on Women (Beijing, September 1995) includes a detailed section on "Strategic Objectives and Actions" for the girl child (A.CONF.177/20/Rev.1, section L, pp. 145 *et seq.*). In 2000 and again in 2005, special sessions of the United Nations General Assembly reviewed progress five and ten years after the World Conference and adopted further actions and initiatives to implement the Declaration and Plan of Action (see "Beijing + 5", section L, p. 18 and pp. 25 *et seq.*, A/RES/S-23/3; "Beijing + 10").

The Committee has suggested to some States that "narrow interpretations of Islamic texts" by authorities were impeding implementation of the Convention. For example, it recommended to United Arab Emirates that the State Party should

"... undertake all possible measures to reconcile the interpretation of Islamic texts with fundamental human rights". *(United Arab Emirates CRC/C/15/Add.183, para. 22(b))*

And examining Jordan's Second Report, it concluded:

"Noting the universal values of equality and tolerance inherent in Islam, the Committee observes that narrow interpretations of Islamic texts by authorities, particularly in areas relating to family law, are impeding the enjoyment of some human rights protected under the Convention...

"In accordance with the findings of the Human Rights Committee (CCPR/C/79/Add.35), the Committee on the Elimination of Discrimination against Women (CEDAW) (CEDAW/C/JOR/2), its own previous concluding observations (Jordan CRC/C/15/Add.21) and with article 2 of the Convention, the Committee recommends to the State Party to take effective measures to prevent and eliminate discrimination on the grounds of sex and birth status in all fields of civil, economic, political, social and cultural life. The Committee recommends to the State Party to incorporate equality on the basis of sex in article 6 of the Constitution. The Committee recommends to the State Party to make all efforts to enact or rescind civil and criminal legislation, where necessary, to prohibit any such discrimination. In this regard, the Committee encourages the State Party to consider the practice of other States that have been successful in reconciling fundamental rights with Islamic texts. The Committee recommends to the State Party to take all appropriate measures, such as comprehensive public education campaigns, to prevent and combat negative societal attitudes in this regard, particularly within the family. Religious leaders should be mobilized to support such efforts." *(Jordan CRC/C/15/Add.125, paras. 9 and 30. See also Islamic Republic of Iran CRC/C/15/Add.123, para. 22; Egypt CRC/C/15/Add.145, para. 6; and Saudi Arabia CRC/C/15/Add.148, para. 24.)*

Children with disabilities

In its General Comment No. 9 on "The rights of children with disabilities", the Committee notes that children with disabilities are still experiencing serious difficulties and facing barriers to the full enjoyment of the rights enshrined in the Convention. The Committee emphasizes that the barrier is not the disability itself but rather a combination of social, cultural, attitudinal and physical obstacles which children with disabilities encounter in their daily lives. The strategy for promoting their rights is therefore to take the necessary action to remove these barriers. The Committee notes that the explicit mention of

disability as a prohibited ground for discrimination in article 2:

"... is unique and can be explained by the fact that children with disabilities belong to one of the most vulnerable groups of children. In many cases forms of multiple discrimination – based on a combination of factors, i.e. indigenous girls with disabilities, children with disabilities living in rural areas and so on – increase the vulnerability of certain groups. It has been therefore felt necessary to mention disability explicitly in the non-discrimination article. Discrimination takes place – often de facto *– in various aspects of the life and development of children with disabilities. As an example, social discrimination and stigmatization leads to their marginalization and exclusion, and may even threaten their survival and development if it goes as far as physical or mental violence against children with disabilities. Discrimination in service provision excludes them from education and denies them access to quality health and social services. The lack of appropriate education and vocational training discriminates against them by denying them job opportunities in the future. Social stigma, fears, overprotection, negative attitudes, misbeliefs and prevailing prejudices against children with disabilities remain strong in many communities and lead to the marginalization and alienation of children with disabilities..."* *(Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, paras. 5 and 8. For full discussion, see article 23, page 321.)*

Children living and/or working on the streets

Most, if not all, States Parties have reported, or acknowledged during discussion with the Committee on the Rights of the Child, that they have some children living and/or working on the streets. Their situation and the many forms of discrimination suffered by them, being among the most disadvantaged and vulnerable children, has been a major issue of concern and a focus for recommendations by the Committee (for detailed discussion, see article 20, page 286).

In the report on its sixth (special) session, the Committee noted resolution 1994/93 of the Commission on Human Rights on the plight of street children:

"In particular, it welcomed the statement by the Commission that strict compliance with the provisions of the Convention on the Rights of the Child would constitute a significant step towards solving the problems in this connection. It also welcomed the fact that the Commission commended the Committee 'for the attention it pays in its monitoring activities to the situation of children who, to survive, are forced to live and work in the streets'. Furthermore, the Committee noted that the Commission reiterated its invitation to the Committee to consider the possibility of a general comment thereon... In its discussion the Committee also pointed out that the term 'street children' may not clearly define the nature or the causes of the violations these children suffer. It is in fact an expression that covers a diversity of situations affecting children. Some work in the street but have homes, others are abandoned or for other reasons become homeless, others again have escaped abuse, some are pushed into prostitution or drug abuse. Another concern about the term was that it was understood in some societies to be stigmatizing and discriminatory. The Committee, therefore, had endeavoured to use more appropriate terminology." *(Committee on the Rights of the Child, Report on the sixth (special) session, April 1994, CRC/C/29, p. 31)*

Protection of child from discrimination or punishment on basis of status, activities, expressed opinions or beliefs of child's parents, guardians or family members: article 2(2)

It is doubtful whether the very wide potential implications of this provision have been sufficiently considered during the preparation and consideration of reports by States Parties. Paragraph 1 of article 2 lists as grounds for discrimination **"the child's or his or her parent's or legal guardian's race, colour, sex..."** [editors' emphasis]. Paragraph 2 adds protection against "all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members". Paragraph 1 concerns discrimination only in relation to the enjoyment of rights in the Convention; paragraph 2 requires action against "all forms of discrimination", and is not confined to the issues raised by the Convention.

In its examination of reports, the Committee has noted a variety of examples of the child suffering discrimination covered by paragraph 2. Implementation requires States to ensure that any existing Constitution, relevant legislation, court decisions and administrative policy and practice comply with this principle. For example, are "all appropriate measures" taken to protect children from discrimination or punishment when their parents are subject to action on the grounds of criminal behaviour or immigration status? (In addition, article 9 emphasizes that children must

be separated from their parents only when separation is necessary for the best interests of the child; see page 122). Are children penalized because of their parents' marital status? The Committee has focused frequently on discrimination against children born "out of wedlock" – non-marital children. For example:

"… As regards children born out of wedlock, the Committee requests the State Party to review its domestic legislation in order to secure their right to equal treatment, including their right to equal inheritance and abolish the discriminatory classification of those children as 'illegitimate'." (Philippines CRC/C/15/Add.259, para. 21)

Does the State have the means to intervene on behalf of children whose rights (for example to health care) are threatened because of the extreme religious beliefs of their parents? Do policy and practice in institutions ensure that brothers and sisters are not victimized because of the behaviour of a sibling?

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 2, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (the principle of non-discrimination in article 2 is relevant to **all government departments)**?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 2 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising?

• Specific issues in implementing article 2

- ☐ Is the Convention's principle of non-discrimination with special reference to children included in the constitution, if any, and in legislation?

Are rights recognized for all children in the jurisdiction, without discrimination, including

- ☐ non-nationals?
- ☐ refugees?
- ☐ illegal immigrants?

- ☐ Has the State identified particularly disadvantaged and vulnerable groups of children?
- ☐ Has the State developed appropriate priorities, targets and programmes of affirmative action to reduce discrimination against disadvantaged and vulnerable groups?

Does legislation, policy and practice in the State ensure that there is no discrimination against children on the grounds of the child's or his/her parent's/guardian's

- ☐ race?
- ☐ colour?
- ☐ gender?

How to use the checklist, *see page XIX*

- ☐ language?
- ☐ religion?
- ☐ political or other opinion?
- ☐ national origin?
- ☐ social origin?
- ☐ ethnic origin?
- ☐ property?
- ☐ disability?
- ☐ birth?
- ☐ other status?

(for a full list of grounds of discrimination identified by the Committee on the Rights of the Child, see box, pages 24 and 25.)

☐ Is disaggregated data collected to enable effective monitoring of potential discrimination on all of these grounds in the enjoyment of rights, and discrimination between children in different regions, and in rural and urban areas?

☐ Has the State developed in relation to girls an implementation strategy for the Platform for Action adopted at the Fourth World Conference on Women, taking into account the recommendations of the 2000 and 2005 Reviews?

☐ Has the State developed measures and programmes, relevant to the Convention, in order to follow up on the Durban Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance?

☐ Does monitoring of the realization of each right guaranteed in the Convention include consideration of the principle of non-discrimination?

Does legislation, policy and practice in the State ensure that the child is protected against all forms of discrimination or punishment on the basis of the child's parents', legal guardians' or family members'

- ☐ status, including marital status?
- ☐ activities?
- ☐ expressed opinions?
- ☐ beliefs?

Reminder: **The Convention is indivisible and its articles are interdependent. Article 2, the non-discrimination principle, has been identified as a general principle by the Committee on the Rights of the Child, and needs to be applied to all other articles.**

Particular regard should be paid to: The other general principles

Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child.

UNICEF/97-0484/Murray-Lee

Best interests of the child

Text of Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

The Committee on the Rights of the Child has highlighted article 3(1), that the best interests of the child shall be a primary consideration in all actions concerning children, as one of the general principles of the Convention on the Rights of the Child, alongside articles 2, 6 and 12. The principle was first seen in the 1959 Declaration of the Rights of the Child. Interpretations of the best interests of children or use of the principle cannot trump or override any of the other individual rights guaranteed by other articles in the Convention. The concept acquires particular significance in situations where other more specific provisions of the Convention do not apply. Article 3(1) emphasizes that governments and public and private bodies must ascertain the impact on children of their actions, in order to ensure that the best interests of the child are a primary consideration, giving proper priority to children and building child-friendly societies. The Committee on the Rights of the Child has developed its interpretation of the principle in relation to various issues in its successive General Comments.

Within the Convention, the concept is also evident in other articles, providing obligations to consider the best interests of individual children in particular situations in relation to

- Separation from parents: The child shall not be separated from his or her parents against his or her will "except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures,

Summary

that such separation is necessary for the best interests of the child"; and States must respect the right of the child to maintain personal relations and direct contact with both parents on a regular basis "except if it is contrary to the child's best interests" (article 9(1) and (3));

- Parental responsibilities: Both parents have primary responsibility for the upbringing of their child and "the best interests of the child will be their basic concern" (article 18(1));
- Deprivation of family environment: Children temporarily or permanently deprived of their family environment "or in whose own best interests cannot be allowed to remain in that environment", are entitled to special protection and assistance (article 20);
- Adoption: States should ensure that "the best interests of the child shall be the paramount consideration" (article 21);
- Restriction of liberty: Children who are deprived of liberty must be separated from adults "unless it is considered in the child's best interest not to do so" (article 37(c));
- Court hearings of penal matters involving a juvenile: Parents or legal guardians should be present "unless it is considered not to be in the best interest of the child" (article 40(2)(b)(iii)).

The second and third paragraphs of article 3 are also of great significance. Article 3(2) outlines an active overall obligation of States, ensuring the necessary protection and care for the child's well-being in all circumstances, while respecting the rights and duties of parents. Together with article 2(1) and article 4, article 3(2) sets out overarching implementation obligations of the State.

Article 3(3) requires that standards be established by "competent bodies" for all institutions, services and facilities for children, and that the State ensures that the standards are complied with. ■

Article 3(1)

The concept of the "best interests" of children has been the subject of more academic analysis than any other concept included in the Convention on the Rights of the Child. In many cases, its inclusion in national legislation pre-dates ratification of the Convention, and the concept is by no means new to international human rights instruments. The 1959 Declaration of the Rights of the Child uses it in Principle 2: "The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration."

The principle is included in two articles of the 1979 Convention on the Elimination of All Forms of Discrimination against Women: article 5(b) requires States Parties to that Convention to "ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of children is the primordial consideration in all cases." Similarly, article 16(1)(d) provides that in all matters relating to marriage and family relations "the interests of the children shall be paramount".

The principle does not appear in either of the International Covenants, but the Human Rights Committee, in two of its General Comments on interpretation of the International Covenant on Civil and Political Rights, has referred to the child's interest being "paramount" in cases of parental separation or divorce (Human Rights Committee, General Comments Nos. 17 and 19, HRI/GEN/1/Rev.8, pp. 185 and 189).

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies..."

The wording of the principle indicates that its scope is very wide, going beyond state-initiated actions to cover private bodies too, and embracing all actions concerning children as a group.

In General Comments and in its examination of States Parties' reports, the Committee on the Rights of the Child has emphasized that article 3(1) is fundamental to the overall duty to undertake all appropriate measures to implement the Convention for all children under article 4. Consideration of the best interests of the child should be built into national plans and policies for children and into the workings of parliaments and government, nationally and locally, including, in particular, in relation to budgeting and allocation of resources at all levels.

In its General Comment No. 5 on "General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)", the Committee emphasizes the importance

of ensuring that domestic law reflects article 3(1) together with the other identified general principles (para. 22). The Committee states that the best interests' principle

"… requires active measures throughout Government, parliament and the judiciary. Every legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children's rights and interests are or will be affected by their decisions and actions – by, for example, a proposed or existing law or policy or administrative action or court decision, including those which are not directly concerned with children, but indirectly affect children." *(CRC/GC/2003/5, para. 12)*

The Committee goes on to explain the need for child impact assessment and evaluation:

"Ensuring that the best interests of the child are a primary consideration in all actions concerning children (art. 3(1)), and that all the provisions of the Convention are respected in legislation and policy development and delivery at all levels of government demands a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation). This process needs to be built into government at all levels and as early as possible in the development of policy.
"Self-monitoring and evaluation is an obligation for Governments. But the Committee also regards as essential the independent monitoring of progress towards implementation by, for example, parliamentary committees, NGOs, academic institutions, professional associations, youth groups and independent human rights institutions….
"The Committee commends certain States which have adopted legislation requiring the preparation and presentation to parliament and/or the public of formal impact analysis statements. Every State should consider how it can ensure compliance with article 3 (1) and do so in a way which further promotes the visible integration of children in policy-making and sensitivity to their rights." *(Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, paras. 45-47. See also article 4, page 61.)*

In its General Comment No. 7 on "Implementing child rights in early childhood", the Committee states:

"The principle of best interests applies to all actions concerning children and requires active measures to protect their rights and promote their survival, growth, and well-being, as well as measures to support and assist parents and others who have day-to-day responsibility for realizing children's rights:
(a) Best interests of individual children. All decision-making concerning a child's care, health, education, etc. must take account of the best interests' principle, including decisions by parents, professionals and others responsible for children. States Parties are urged to make provisions for young children to be represented independently in all legal proceedings by someone who acts for the child's interests, and for children to be heard in all cases where they are capable of expressing their opinions or preferences;
(b) Best interests of young children as a group or constituency. All law and policy development, administrative and judicial decision-making and service provision that affect children must take account of the best interests' principle. This includes actions directly affecting children (e.g. related to health services, care systems, or schools), as well as actions that indirectly impact on young children (e.g., related to the environment, housing or transport)." *(Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 13)*

"… the best interests of the child…"

The Working Group drafting the Convention did not discuss any further definition of "best interests", and the Committee on the Rights of the Child has not as yet (2007) drafted a General Comment on the principle. But in its first 10 General Comments, issued between 2001 and 2007, it has alluded to the principle and in some cases – see below – set out quite detailed explanations of the implications of applying it to individual children and/or to particular groups of children in particular circumstances.

The Committee has repeatedly stressed that the Convention should be considered as a whole and has emphasized its interrelationships, in particular between those articles it has elevated to the status of general principles (articles 2, 3, 6 and 12). Thus, the principles of non-discrimination, maximum survival and development, and respect for the views of the child must all be relevant to determining what the best interests of a child are in a particular situation, as well as to determining the best interests of children as a group.

For example, in comments on Albania's Initial Report, the Committee

"… notes the progress reported by the State Party in giving primary consideration to the best interests of the child. However, the Committee regrets that the determination of what constitutes the 'best interests' seems to

be the decision of adults alone involving little consultation with children, even when they are able to state their opinions and interests". *(Albania CRC/C/15/Add.249, para. 26)*

Consideration of best interests must embrace both short- and long-term considerations for the child. Any interpretation of best interests must be consistent with the spirit of the entire Convention – and in particular with its emphasis on the child as an individual with views and feelings of his or her own and the child as the subject of civil and political rights as well as special protections.

States cannot interpret best interests in an overly culturally relativist way and cannot use their own interpretation of "best interests" to deny rights now guaranteed to children by the Convention, for example to protection against traditional practices and violent punishments (see pages 371 and 256). In its 2006 General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (articles. 19, 28.2 and 37, *inter alia*)", the Committee explains:

"When the Committee on the Rights of the Child has raised eliminating corporal punishment with certain States during the examination of their reports, governmental representatives have sometimes suggested that some level of 'reasonable' or 'moderate' corporal punishment can be justified as in the 'best interests' of the child. The Committee has identified, as an important general principle, the Convention's requirement that the best interests of the child should be a primary consideration in all actions concerning children (article 3(1)). The Convention also asserts, in article 18, that the best interests of the child will be parents' basic concern. But interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence and the requirement to give due weight to the child's views; it cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity." *(Committee on the Rights of the Child, General Comment No. 8, 2006, CRC/C/GC/8, para. 26)*

The Committee reviews the implications of article 3(1) for States' treatment of unaccompanied and separated children, and the search for long- and short-term solutions for them. In its 2005 General Comment No. 6 on "Treatment of unaccompanied and separated children outside their country of origin" it emphasizes that for displaced children, the principle must be respected during all stages of the displacement cycle and it gives some indication of what a "best interests' determination" should consist of:

"At any of these stages, a best interests' determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child's life.
"A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. Consequently, allowing the child access to the territory is a prerequisite to this initial assessment process. The assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques.
"Subsequent steps, such as the appointment of a competent guardian as expeditiously as possible, serves as a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child..." *(Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, paras. 19-21. The Committee covers the implications of article 12 in these situations in a separate section of the General Comment (para. 25).)*

In its General Comment on "HIV/AIDS and the rights of the child", the Committee notes:

"Policies and programmes for the prevention, care and treatment of HIV/AIDS have generally been designed for adults with scarce attention to the principle of the best interests of the child as a primary consideration... The obligations attached to this right are fundamental to guiding the action of States in relation to HIV/AIDS. The child should be placed at the centre of the response to the pandemic, and strategies should be adapted to children's rights and needs." *(Committee on the Rights of the Child, General Comment No. 3, 2003, CRC/GC/2003/3, para. 10)*

"... shall be a primary consideration"

The wording indicates that the best interests of the child will not always be the single, overriding factor to be considered; there may be competing or conflicting human rights interests, for example, between individual children, between different groups of children and between children and adults. The child's interests, however, must be the subject of active consideration; it needs to be demonstrated that children's interests have been explored and taken into account as a primary consideration.

Some debate took place in the Working Group drafting the Convention, and proposals were made that the article should refer to the child's best interests as "**the** primary consideration" or "the paramount consideration". These proposals were rejected. The very wide umbrella-like coverage of article 3(1) – "in all actions concerning children" – includes actions in which other parties may have equal claims to have their interests considered. (E/CN.4/L.1575, pp. 3 to 7, Detrick, pp. 132 and 133)

Where the phrase "best interests" is used elsewhere in the Convention (see above, page 37), the focus is on deciding appropriate action for individual children in particular circumstances and requires determination of the best interests of individual children. In such situations, the child's interests are the paramount consideration (as stated explicitly in relation to adoption in article 21; see page 295).

Best interests principle to be reflected in legislation

The Committee has consistently emphasized that article 3, together with other identified general principles in the Convention, should be reflected in legislation and integrated into all relevant decision-making (and it confirms this in its General Comment No. 5 on "General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)" – see above, pages 36 and 37).

The Committee has indicated also that it expects the best interests' principle to be written into legislation in a way that enables it to be invoked before the courts. In examining second and subsequent reports, the Committee continues to express concern that in practice the general principles contained in articles 3 and 12 are not respected. For example:

"While the Committee notes that the principles of the 'best interests of the child' (art. 3) and 'respect for the views of the child' (art. 12) have been incorporated in domestic legislation, it remains concerned that in practice, as it is recognized in the report, these principles are not respected owing to the fact that children are not yet perceived as persons entitled to rights and that the rights of the child are undermined by adults' interests. The Committee recommends that further efforts be made to ensure the implementation of the principles of the 'best interests of the child' and 'respect for the views of the child', especially his or her rights to participate in the family, at school, within other institutions and in society in general. These principles should also be reflected in all policies and programmes relating to children. Awareness-raising among the public at large, including traditional communities and religious leaders, as well as educational programmes on the implementation of these principles should be reinforced." (Bolivia CRC/C/15/Add.95, para. 18)

"The Committee values the fact that the State Party holds the principle of the best interests of the child to be of vital importance in the development of all legislation, programmes and policies concerning children and is aware of the progress made in this respect. However, the Committee remains concerned that the principle that primary consideration should be given to the best interests of the child is still not adequately defined and reflected in some legislation, court decisions and policies affecting certain children, especially those facing situations of divorce, custody and deportation, as well as Aboriginal children. Furthermore, the Committee is concerned that there is insufficient research and training for professionals in this respect.

"The Committee recommends that the principle of 'best interests of the child' contained in article 3 be appropriately analysed and objectively implemented with regard to individual and groups of children in various situations (e.g,. aboriginal children) and integrated in all reviews of legislation concerning children, legal procedures in courts, as well as in judicial and administrative decisions and in projects, programmes and services that have an impact on children. The Committee encourages the State Party to ensure that research and educational programmes for professionals dealing with children are reinforced and that article 3 of the Convention is fully understood, and that this principle is effectively implemented." (Canada CRC/C/15/Add.215, paras. 24 and 25)

"As regards the general principle of the best interests of the child under article 3 of the Convention, the Committee is concerned that this principle is not given adequate attention in national legislation and policies and that this principle is not a primary consideration in decision-making regarding children, for example custody decisions. The Committee also notes with concern that awareness of its significance is low among the population.

"The Committee recalls its previous recommendation in this regard made upon the consideration of the State Party's initial report and recommends that the State Party take measures to raise awareness of the meaning and practical application of the principle of the best interests of the child and to ensure that article 3 of the Convention is duly reflected in its legislation and administrative measures. The Committee recommends that the State Party review its legislation critically to ensure that the main thrust of the Convention,

namely that children are subjects of their own rights, is adequately reflected in domestic legislation and that the best interests of the child is a primary consideration in all decision-making regarding children, including custody decisions." (Algeria CRC/C/15/Add.269, paras.29 and 30)

"The Committee welcomes the assertion of the State Party that priority is given to the implementation of children's rights, but it is concerned that the best interests of the child are insufficiently addressed under the pressure of the economic transformation and the pressures of an aging population.
"The Committee recommends that the State Party:
(a) Ensure that the general principle of the best interests of the child is a primary consideration and is fully integrated into all legislation relevant to children; and
(b) Ensure that this principle is applied in all political, judicial and administrative decisions, as well as projects, programmes and services that have an impact on children." (Latvia CRC/C/LVA/CO/2, paras. 22 and 23)

When a "best interests'" principle is already reflected in national legislation, it is generally in relation to decision-making about individual children, in which the child is the primary, or a primary, subject or object – for example in family proceedings following separation or divorce of parents, in adoption and in state intervention to protect children from ill-treatment. It is much less common to find the principle in legislation covering other "actions" that concern groups of children or all children, but may not be specifically directed at children. The principle should apply, for example, to policy-making on employment, planning, transport and so on. Even within services whose major purpose is children's development, for example education or health, the principle is often not written into the legislative framework. Thus, in relation to the United Kingdom, the Committee noted its concern

"... about the apparent insufficiency of measures taken to ensure the implementation of the general principles of the Convention, namely the provisions of its articles 2, 3, 6, and 12. In this connection, the Committee observes in particular that the principle of the best interests of the child appears not to be reflected in legislation in such areas as health, education and social security which have a bearing on the respect for the rights of the child." (United Kingdom CRC/C/15/Add.34, para. 11)

It repeated its concern with emphasis, when it examined the United Kingdom's Second Report (United Kingdom CRC/C/15/Add.188, paras. 25 and 26).

Not subject to derogation

The Committee has emphasized that the general principles of the Convention on the Rights of the Child are not subject to derogation in times of emergency. For example, in the report of its Day of General Discussion on "Children in armed conflict" the Committee commented that none of the general provisions in articles 2, 3 and 4

"... admit a derogation in time of war or emergency". (Committee on the Rights of the Child, Report on the second session, September/October 1992, CRC/C/10, para. 67)

States to ensure necessary protection and care for the child, taking account of rights and duties of parents and others legally responsible: article 3(2)

States must ensure necessary protection and care for all children in their jurisdiction. They must take account of the rights and duties of parents and others legally responsible for the child. But there are many aspects of "care and protection" that individual parents cannot provide – for example, protection against environmental pollution or traffic accidents. And where individual families are unable or unwilling to protect the child, the State must provide a "safety net", ensuring the child's well-being in all circumstances. Often, the obligations of State and parent are closely related – for example, the State is required to make available compulsory free primary education; parents have a duty to ensure education in line with the child's best interests.

A commentary published in the *Bulletin of Human Rights* emphasizes the "fundamental importance" of paragraph 2 of article 3: "Its significance derives in the first place from its position as an umbrella provision directed at ensuring, through one means or another, the well-being of the child. Secondly, its comprehensiveness means that it constitutes an important reference point in interpreting the general or overall obligations of governments in the light of the more specific obligations contained in the remaining parts of the Convention. The obligation which is explicit in the undertaking 'to ensure the child such protection and care as is necessary for his or her well-being' is an unqualified one. While the next phrase makes it subject to the need to take account of the rights and duties of other entities, the obligation of the State Party, albeit as a last resort, is very clearly spelled out. The verb used to describe the obligation ('to ensure') is very strong and encompasses both passive and active (including pro-active) obligations. The terms 'protection

and care' must also be read expansively, since their objective is not stated in limited or negative terms (such as 'to protect the child from harm') but rather in relation to the comprehensive ideal of ensuring the child's 'well-being'..." (Philip Alston, "The Legal framework of the Convention on the Rights of the Child", *Bulletin of Human Rights,* 91/2, p. 9)

The Committee on the Rights of the Child has very frequently referred to circumstances in which the State is failing to adequately provide for particular groups of vulnerable children. The most common category are children living and/or working on the streets, identified as existing in significant numbers in most States (see article 2, page 30 and article 20, page 286). Article 3(2) makes clear that, notwithstanding the rights and duties of parents and any others legally responsible, the State has an active obligation to ensure such children's well-being. This general obligation is linked to its obligations under the other general principles of the Convention in articles 2, 6, and 12 and to any relevant specific obligations – for example to provide "appropriate assistance to parents and legal guardians" in their child-rearing responsibilities under article 18(2), to provide "special protection and assistance" to children deprived of their family environment (article 20(1)), to recognize the rights of children to benefit from social security and to an adequate standard of living (articles 26 and 27) and to protect children from all forms of violence and exploitation (articles 19, 32, 33, 34, 35, 36, 37).

Similarly, in times of economic recession or crisis, or of environmental disaster or armed conflict this overriding active obligation comes into play, linked to other more specific provisions. In order to be able to fulfil its obligations, the State must ensure that it knows, as far as possible, when a child's well-being is threatened and what additional State action is required.

Institutions, services and facilities for care or protection of children must conform with established standards: article 3(3)

Standards must be established for institutions, services and facilities for children, and the State must ensure that the standards are complied with through appropriate inspection. Other articles refer to particular services that States Parties should ensure are available; for example "for the care of children" (under article 18(2) and (3)), alternative care provided for children deprived of their family environment (article 20), care for children with disabilities (article 23), rehabilitative care (article 39) and institutional and other care related to the juvenile justice system (article 40). There should also be health and educational institutions providing care or protection.

Article 3(3) does not provide an exhaustive list of the areas in which standards must be established but it does mention "particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision." In addition, services and institutions providing care and protection must comply with all other provisions of the Convention, respecting, for example, the principles of non-discrimination and best interests and the right of children to have their views and other civil rights respected and to be protected from all forms of violence and exploitation (articles 2, 3, 12, 13, 14, 15, 16, 19, 32-37). In addition, article 25 (see page 379) sets out the right of a child who has been placed for care, protection or treatment "to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement."

Implementation of article 3(3) requires a comprehensive review of the legislative framework applying to all such institutions and services, whether run directly by the State, or by voluntary and private bodies. The review needs to cover all services – care, including foster care and day care, health, education, penal institutions and so on. Consistent standards should be applied to all, with adequate independent inspection and monitoring. In institutions, widespread violence against children, both physical and sexual, has been uncovered in recent years in many States, emphasizing the lack of appropriate safeguards, including independent inspection and effective complaints procedures (see also article 12, page 158 and article 19, pages 265 *et seq.*).

In its General Comment No. 7 on "Implementing child rights in early childhood", the Committee notes:

"States Parties must ensure that the institutions, services and facilities responsible for early childhood conform to quality standards, particularly in the areas of health and safety, and that staff possess the appropriate psychosocial qualities and are suitable, sufficiently numerous and well-trained. Provision of services appropriate to the circumstances, age and individuality of young children requires that all staff be trained to work with this age group. Work with young children should be socially valued and properly paid, in order to attract a highly qualified workforce, men as well as women. It is essential that they have sound, up-to-date theoretical and practical understanding

about children's rights and development...; that they adopt appropriate child-centred care practices, curricula and pedagogies; and that they have access to specialist professional resources and support, including a supervisory and monitoring system for public and private programmes, institutions and services." *(Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 23)*

The provision covers not only state-provided institutions, services and facilities but also all those "responsible" for the care or protection of children. In many countries, much of the non-family care of children is provided by voluntary or private bodies, and in some States policies of privatization of services are taking more institutions out of direct state control. Article 3(3) requires standards to be established for all such institutions, services and facilities by competent bodies. Together with the non-discrimination principle in article 2, the standards must be consistent and conform to the rest of the Convention. The Committee re-emphasized the need for consistent standards across public and private sectors in the recommendations adopted following its Day of General Discussion on "The private sector as service provider and its role in implementing child rights" (Report on the thirty-first session, September/October 2002, CRC/C/121, pp. 152 *et seq*.). It referred to these recommendations and expanded on them in relation to early childhood services in its General Comment No. 7:

"... the Committee recommends that States Parties support the activities of the non-governmental sector as a channel for programme implementation. It further calls on all non-State service providers ('for profit' as well as 'non-profit' providers) to respect the principles and provisions of the Convention and, in this regard, reminds States Parties of their primary obligation to ensure its implementation. Early childhood professionals – in both the state and non-state sectors – should be provided with thorough preparation, ongoing training and adequate remuneration. In this context, States Parties are responsible for service provision for early childhood development. The role of civil society should be complementary to – not a substitute for – the role of the State. Where non-State services play a major role, the Committee reminds States Parties that they have an obligation to monitor and regulate the quality of provision to ensure that children's rights are protected and their best interests served." *(Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 32)*

The Committee on the Rights of the Child has frequently commented on lack of qualified staff, lack of training and inadequate monitoring and supervision, in particular of institutions. For example, it expressed concern to Sri Lanka that there was no monitoring mechanism for either registered or unregistered institutions or voluntary homes, and recommended that the State should

"... establish a uniform set of standards for public and private institutions and voluntary homes and monitor them regularly". *(Sri Lanka CRC/C/15/Add.207, paras. 32 and 33)*

"... The Committee ... also recommends the further training of personnel in all institutions, such as social, legal or educational workers. An important part of such training should be to emphasize the promotion and protection of the child's sense of dignity and the issue of child neglect and maltreatment. Mechanisms to evaluate the ongoing training of personnel dealing with children are also required." *(Russian Federation CRC/C/15/Add.4, para. 19)*

The Committee followed this up when it examined the Second Report of the Russian Federation:

"... In the light of article 3, paragraph 3, of the Convention, the Committee further recommends the reform, including legal reform, of the institutional system by the establishment of standards for conditions in institutions and their regular inspection, in particular by reinforcing the role and powers of independent inspection mechanisms and ensuring their right to inspect foster homes and public institutions without warning..." *(Russian Federation CRC/C/15/Add.110, para. 39)*

And it returned to the issue on examination of the Third Report, noting again the need for "independent public inspections of children's institutions" (CRC/C/RUS/CO/3, paras. 44 and 45).

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 3, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (implementation of article 3 is relevant to **all departments of government**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 3 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising **for all those working with or for children**?

• Specific issues in implementing article 3

Is the principle that the best interests of the child shall be a primary consideration in all actions concerning children reflected in

- ☐ the Constitution (if any)?

relevant legislation applying to

- ☐ public social welfare institutions?
- ☐ private social welfare institutions?
- ☐ courts of law?
- ☐ administrative authorities?
- ☐ legislative bodies?

Is consideration of the best interests of affected children – child impact assessment – required in legislation, administrative decision-making, and policy and practice at all levels of government concerning

- ☐ budget allocations to the social sector and to children, and between and within departments of government?

How to use the checklist, *see page XIX*

- ☐ social security?
- ☐ planning and development?
- ☐ the environment?
- ☐ housing?
- ☐ transport?
- ☐ health?
- ☐ education?
- ☐ employment?
- ☐ administration of juvenile justice?
- ☐ the criminal law (e.g. the effects of the sentencing of parents on children, etc.)?
- ☐ nationality and immigration, including asylum seeking?
- ☐ any rules governing alternative care, including institutions for children?

☐ Are there legislative provisions relating to children in which the best interests of the child are to be the "paramount" rather than primary consideration?

☐ Where legislation requires determination of the best interests of a child in particular circumstances, have criteria been adopted for the purpose which are compatible with the principles of the Convention, including giving due weight to the expressed views of the child?

Article 3(2)

☐ Does legislation require the State to provide such care and protection as is necessary for the well-being of any child in cases where it is not otherwise being provided?

☐ Does legislation provide for such care and protection at times of national disaster?

☐ Is there adequate monitoring to determine whether this provision is fully implemented for all children?

Article 3(3)

Has the State reviewed all institutions, services and facilities, both public and private, responsible for the care or protection of children to ensure that formal standards are established covering

- ☐ safety?
- ☐ health?
- ☐ protection of children from all forms of violence?
- ☐ the number and suitability of staff?
- ☐ conformity with all provisions of the Convention?
- ☐ independent inspection and supervision?

How to use the checklist, *see page XIX*

Reminder: **The Convention is indivisible and its articles interdependent. Article 3(1) has been identified by the Committee on the Rights of the Child as a general principle of relevance to implementation of the whole Convention. Article 3(2) provides States with a general obligation to ensure necessary protection and care for the child's well-being.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Other articles requiring specific consideration of the child's best interests

Article 9: separation from parents
Article 18: parental responsibilities for their children
Article 20: deprivation of family environment
Article 21: adoption
Article 37(c): separation from adults in detention
Article 40(2)(b)(iii): presence of parents at court hearings of penal matters involving a juvenile

Article 3(3)
Article 3(3) is relevant to the provision of all institutions, services and facilities for children, for example all forms of alternative care (articles 18, 20, 21, 22, 23 and 39), health care (article 24), education (article 28), and juvenile justice (articles 37 and 40)

UNICEF/5131/Isaac

Implementation of rights in the Convention

Text of Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

Article 4 sets out States' overall obligations to implement all the rights in the Convention on the Rights of the Child. They must take "all appropriate legislative, administrative, and other measures". Only in relation to economic, social and cultural rights, is there the qualification that such measures shall be undertaken to the maximum extent of their available resources and, where needed, within the framework of international cooperation. Neither the Convention itself nor the Committee defines which of the articles include civil and political rights and which economic, social or cultural rights. It is clear that almost all articles include elements which amount to civil or political rights (see page 52).

Other general implementation obligations on States Parties are provided by article 2 (to respect and ensure the rights in the Convention to all children without discrimination, see page 21), and article 3(2) (to "undertake to ensure the child such protection and care as is necessary for his or her well-being..." see page 40).

While emphasizing that there is no favoured legislative or administrative model for implementation, the Committee on the Rights of the Child has proposed a wide range of strategies to ensure Governments give appropriate priority and attention to children in order to implement the whole Convention effectively. From the beginning, in its *Guidelines for Initial Reports,* the Committee has emphasized the particular importance of ensuring that all domestic legislation is compatible with the Convention and that there is appropriate coordination of policy affecting children within and between all levels of government.

In 2003, the Committee adopted a detailed General Comment on "General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)" (CRC/GC/2003/5; for full text see www.ohchr.org/english/bodies/crc/comments.htm). In a foreword, the Committee indicates that the various elements of the concept are complex and that it is likely to issue more detailed general comments on individual elements in due course. It also notes the relevance of its General Comment No. 2 on "The role of independent national human rights institutions in the protection and promotion of the rights of the child" (CRC/GC/2002/2; see below, page 66). ■

Summary

General measures of implementation

As a Committee member commented in 1995 during examination of Canada's Initial Report: "... given the wide range of different administrative and legislative systems among the [then] 174 States Parties, the Committee was in no position to specify particular solutions. Indeed, a degree of diversity in the mechanisms set up to implement the Convention might lead to a degree of competition, which could be very beneficial. The important point was that the Convention should be the main benchmark and inspiration of action at the provincial and central levels..." (Canada CRC/C/SR.214, para. 54)

In its 2003 General Comment No. 5 on "General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)", the Committee provides detailed guidance to States. It first explains and defines the concept:

"When a State ratifies the Convention on the Rights of the Child, it takes on obligations under international law to implement it. Implementation is the process whereby States Parties take action to ensure the realization of all rights in the Convention for all children in their jurisdiction. Article 4 requires States Parties to take 'all appropriate legislative, administrative and other measures' for implementation of the rights contained therein. While it is the State which takes on obligations under the Convention, its task of implementation – of making reality of the human rights of children – needs to engage all sectors of society and, of course, children themselves. Ensuring that all domestic legislation is fully compatible with the Convention and that the Convention's principles and provisions can be directly applied and appropriately enforced is fundamental. In addition, the Committee on the Rights of the Child has identified a wide range of measures that are needed for effective implementation, including the development of special structures and monitoring, training and other activities in Government, parliament and the judiciary at all levels.

"In its periodic examination of States Parties' reports under the Convention, the Committee pays particular attention to what it has termed 'general measures of implementation'. In its Concluding Observations issued following examination, the Committee provides specific recommendations relating to general measures. It expects the State Party to describe action taken in response to these recommendations in its subsequent periodic report..." (Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, paras. 1 and 2).

The Committee's reporting guidelines arrange the Convention's articles in clusters, the first being on "general measures of implementation". This groups article 4 with article 42 (the obligation to make the content of the Convention widely known to children and adults; see page 627) and article 44, paragraph 6 (the obligation to make reports widely available within the State; see page 652).

The outcome document from the United Nations General Assembly's special session on children, *A World Fit for Children*, committed governments to develop measures for implementation (Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, see box).

The Committee notes, from its examination of reports over the first decade, positive indications that children are becoming more visible in government:

"The general measures of implementation identified by the Committee and described in the present general comment are intended to promote the full enjoyment of all rights in the Convention by all children, through legislation, the establishment of coordinating and monitoring bodies – governmental and independent – comprehensive data collection, awareness-raising and training and the development and implementation of appropriate policies, services and programmes. One of the satisfying results of the adoption and almost universal ratification of the Convention has been the development at the national level of a wide variety of new child-focused and child-sensitive bodies, structures and activities – children's rights units at the heart of Government, ministers for children, interministerial committees on children, parliamentary committees, child impact analysis, children's budgets and 'state of children's rights' reports, NGO coalitions on children's rights, children's ombudspersons and children's rights commissioners and so on.

"While some of these developments may seem largely cosmetic, their emergence at the least indicates a change in the perception of the child's place in society, a willingness to give higher political priority to children and an increasing sensitivity to the impact of governance on children and their human rights.

"The Committee emphasizes that, in the context of the Convention, States must see their role as fulfilling clear legal obligations to each and every child. Implementation of the human rights of children must not be seen as a charitable process, bestowing favours on children..." (Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, paras. 9 to 11)

Building a world fit for children

"We, the Governments participating in the special session, commit ourselves to implementing the Plan of Action through consideration of such measures as:

(a) Putting in place, as appropriate, effective national legislation, policies and action plans and allocating resources to fulfil and protect the rights and to secure the well-being of children;

(b) Establishing or strengthening national bodies, such as, *inter alia,* independent ombudspersons for children, where appropriate, or other institutions for the promotion and protection of the rights of the child;

(c) Developing national monitoring and evaluation systems to assess the impact of our actions on children;

(d) Enhancing widespread awareness and understanding of the rights of the child."

(Extract from "A World Fit for Children", outcome document of the 2002 United Nations General Assembly's special session on children, Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, para. 31)

Each of the International Covenants has articles similar to article 4 of the Convention on the Rights of the Child, setting out overall implementation obligations; and the responsible Treaty Bodies have developed relevant General Comments.

Article 2 of the International Covenant on Civil and Political Rights, on implementation, includes as its first paragraph the non-discrimination principle, equivalent to article 2(1) of the Convention. Paragraph 2 states: "Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant." Paragraph 3 requires States Parties to the Covenant to ensure an "effective remedy" for any person whose rights or freedoms as recognized by the Covenant are violated. In an early General Comment, the Human Rights Committee notes that article 2 of the Covenant on Civil and Political Rights "generally leaves it to the States Parties concerned to choose their method of implementation in their territories, within the framework set out in that article. It recognizes, in particular, that the implementation does not depend solely on constitutional or legislative enactments, which in themselves are often not *per se* sufficient. The [Human Rights] Committee considers it necessary to draw the attention of States Parties to the fact that the obligation under the Covenant is not confined to the respect of human rights, but that States Parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities by the States Parties to enable individuals to enjoy their rights..." The General Comment goes on to emphasize the importance of ensuring that individuals know what their rights are – an obligation included in the Convention on the Rights of the Child in article 42 (see page 627) (Human Rights Committee, General Comment No. 3, 1981, HRI/GEN/1/Rev.8, para. 1, p. 164).

Review and withdrawal of reservations

The first item raised by the Committee's reporting Guidelines under general measures of implementation is the review and withdrawal of any reservations which the State Party may have made.

General Comment No. 5 states:

"States Parties to the Convention are entitled to make reservations at the time of their ratification of or accession to it (art. 51). The Committee's aim of ensuring full and unqualified respect for the human rights of children can be achieved only if States withdraw their reservations. It consistently recommends during its examination of reports that reservations be reviewed and withdrawn. Where a State, after review, decides to maintain a reservation, the Committee requests that a full explanation be included in the next Periodic Report. The Committee draws the attention of States Parties to the encouragement given by the World Conference on Human Rights to the review and withdrawal of reservations.

"Article 2 of the Vienna Convention on the Law of Treaties defines 'reservation' as a 'unilateral statement, however phrased

or named, made by a State, when signing, ratifying, accepting, approving or acceding to a Treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the Treaty in their application to that State'. The Vienna Convention notes that States are entitled, at the time of ratification or accession to a treaty, to make a reservation unless it is 'incompatible with the object and purpose of the treaty' (art. 19).

"Article 51, paragraph 2, of the Convention on the Rights of the Child reflects this: 'A reservation incompatible with the object and purpose of the present Convention shall not be permitted.' The Committee is deeply concerned that some States have made reservations which plainly breach article 51(2) by suggesting, for example, that respect for the Convention is limited by the State's existing Constitution or legislation, including in some cases religious law. Article 27 of the Vienna Convention on the Law of Treaties provides: 'A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.'

"The Committee notes that, in some cases, States Parties have lodged formal objections to such wide-ranging reservations made by other States Parties. It commends any action which contributes to ensuring the fullest possible respect for the Convention in all States Parties." (Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, paras. 13 to 16)

In examining States Parties' reports, the Committee consistently asks States to review and withdraw reservations, in particular where a reservation appears incompatible with the object and purpose of the Convention (see also article 51, page 657). For example, Iran lodged a reservation which states: "The Government of the Islamic Republic of Iran reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the internal legislation in effect." (CRC/C/2/Rev.8, p. 25) The Committee commented:

"... the Committee is nevertheless concerned that the broad and imprecise nature of the State Party's general reservation potentially negates many of the Convention's provisions and raises concerns as to its compatibility with the object and purpose of the Convention." (Islamic Republic of Iran CRC/C/15/Add.123, para. 7)

It returned to this when it examined Iran's Second Report, stating that it

"... deeply regrets that no review has been undertaken of the broad and imprecise nature of the State Party's reservation since the submission of the Initial Report". (Islamic Republic of Iran CRC/C/15/Add.254, para. 6)

Similarly, the Committee told Jordan:

"The Committee is concerned that the broad and imprecise nature of the reservation to article 14 potentially gives rise to infringements of the freedoms of thought, conscience and religion, and raises questions of its compatibility with the object and purpose of the Convention.

"In light of its previous recommendation (Jordan CRC/C/15/Add.21), the Committee recommends to the State Party to study its reservation to article 14 with a view to narrowing it, taking account of the Human Rights Committee's General Comment No. 22 and recommendations (CCPR/C/79/Add.35), and eventually, to withdraw it in accordance with the Vienna Declaration and Programme of Action." (Jordan CRC/C/15/Add.125, paras. 12 and 13)

Ratification of other international instruments

During its examination of reports, the Committee consistently encourages States Parties to consider signing and ratifying or acceding to the two Optional Protocols to the Convention on the Rights of the Child, on the involvement of children in armed conflict (see page 659) and on the sale of children, child prostitution and child pornography (see page 669) and other international human rights instruments, *"in the light of the principles of indivisibility and interdependence of human rights"*. In its General Comment No. 5 it includes a non-exhaustive list of instruments in an annex which it indicates it will update from time to time (see Committee on the Rights of the Child, General Comment No. 5, CRC/GC/2003/5, para. 17 and annex; see box, opposite).

"With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources..."

During the drafting of the Convention, an early version of what was to become article 4 qualified States Parties' obligations by including the phrase "in accordance with their available resources". A number of delegates proposed its deletion, on the grounds that the civil and political rights guaranteed in the International Covenant on Civil and Political Rights were not subject to the availability of resources, and that the Covenant's standards should not be limited in the new Convention. But some delegates argued for the retention of the qualification (E/CN.4/1989/48, pp. 30 and 31; Detrick, p. 155).

Ratification of other key international human rights instruments

In its General Comment on "General measures of implementation of the Convention on the Rights of the Child", the Committee provides in an annex a non-exhaustive list of other international instruments which it urges States Parties to ratify, "in the light of the principles of indivisibility and interdependence of human rights. These are in addition to the two Optional Protocols to the Convention on the Rights of the Child (on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography) and the six other major international human rights instruments. The Committee indicates that it will update this list from time to time.

- Optional Protocol to the International Covenant on Civil and Political Rights;
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
- Optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
- Optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Convention against Discrimination in Education;
- ILO Forced Labour Convention No. 29, 1930;
- LO Convention No. 105 on Abolition of Forced Labour, 1957;
- ILO Convention No. 138 Concerning Minimum Age for Admission to Employment, 1973;
- ILO Convention No. 182 on Worst Forms of Child Labour, 1999;
- ILO Convention No. 183 on Maternity Protection, 2000;
- Convention relating to the Status of Refugees of 1951, as amended by the Protocol relating to the Status of Refugees of 1967;
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949);
- Slavery Convention (1926);
- Protocol amending the Slavery Convention (1953);
- The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956);
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime of 2000;
- Geneva Convention relative to the Protection of Civilians in Time of War;
- Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I);
- Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II);
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and of Their Destruction;
- Statute of the International Criminal Court;
- Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption;
- Hague Convention on the Civil Aspects of International Child Abduction;
- Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children of 1996.

(Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, annex)

The compromise proposal that was accepted differentiates civil and political rights from economic, social and cultural rights. States Parties are to undertake "all appropriate legislative, administrative and other measures" for the implementation of all rights recognized in the Convention. But in relation to economic, social and cultural rights, these measures are to be undertaken "to the maximum extent of their available resources and, where needed, within the framework of international cooperation".

The Committee explains in General Comment No. 5:

"There is no simple or authoritative division of human rights in general or of Convention rights into the two categories. The Committee's reporting guidelines [original Guidelines for Periodic reports, CRC/C/58] group articles 7, 8, 13-17 and 37(a) under the heading 'Civil rights and freedoms', but indicate by the context that these are not the only civil and political rights in the Convention. Indeed, it is clear that many other articles, including articles 2, 3, 6 and 12 of the Convention, contain elements which constitute civil/political rights, thus reflecting the interdependence and indivisibility of all human rights. Enjoyment of economic, social and cultural rights is inextricably intertwined with enjoyment of civil and political rights. As noted … below, the Committee believes that economic, social and cultural rights, as well as civil and political rights, should be regarded as justiciable.

"The second sentence of article 4 reflects a realistic acceptance that lack of resources – financial and other resources – can hamper the full implementation of economic, social and cultural rights in some States; this introduces the concept of 'progressive realization' of such rights: States need to be able to demonstrate that they have implemented 'to the maximum extent of their available resources' and, where necessary, have sought international cooperation. When States ratify the Convention, they take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global implementation.

"… Whatever their economic circumstances, States are required to undertake all possible measures towards the realization of the rights of the child, paying special attention to the most disadvantaged groups." *(Committee on the Rights of the Child, General Comment No. 5, CRC/GC/2003/5, paras. 6 to 8)*

Progressive implementation: General Comment of the Committee on Economic, Social and Cultural Rights

The concept of progressive realization of economic, social and cultural rights is reflected in paragraph 1 of article 2 of the International Covenant on Economic, Social and Cultural Rights: "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." Paragraph 2 provides the principle of non-discrimination. Paragraph 3 states: "Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals."

The Committee on Economic, Social and Cultural Rights made a detailed General Comment on the nature of States Parties' obligations in 1990. Those relating to the adoption of legal measures are quoted below (see box, page 56). As regards progressive realization through the maximum use of available resources, the Committee states: "The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. In this sense the obligation differs significantly from that contained in article 2 of the International Covenant on Civil and Political Rights which embodies an immediate obligation to respect and ensure all of the relevant rights. Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the *raison d'être* of the Covenant which is to establish clear obligations for States Parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources...

"... the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each

of the rights is incumbent upon every State Party. Thus, for example, a State Party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*. By the same token, it must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. Article 2(1) obligates each State Party to take the necessary steps 'to the maximum of its available resources'. In order for a State Party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.

"The Committee wishes to emphasize, however, that even where the available resources are demonstrably inadequate, the obligation remains for a State Party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. Moreover, the obligations to monitor the extent of the realization, or more especially of the non-realization, of economic, social and cultural rights, and to devise strategies and programmes for their promotion, are not in any way eliminated as a result of resource constraints..." (Committee on Economic, Social and Cultural Rights, General Comment No. 3, 1990, HRI/GEN/1/Rev.8, para. 11, pp. 17 and 18. See also box below, page 56.)

The approach of the Committee on Economic, Social and Cultural Rights to the concept of "the maximum use of available resources" is applicable to interpretation of article 4 of the Convention on the Rights of the Child, and the Committee on the Rights of the Child concurs with it in its own General Comment No. 5 (CRC/GC/2003/5, para. 8).

The "available resources" which can be harnessed within a State for the implementation of rights extend well beyond financial resources; there are also human and organizational resources.

"all appropriate legislative... measures"

Ensuring all legislation is fully compatible with the Convention: the need for a comprehensive review

The Committee on the Rights of the Child has emphasized that an essential aspect of implementation is ensuring that all legislation is "fully compatible" with the provisions and principles of the Convention, requiring a comprehensive and ongoing review of all legislation (where necessary, it has proposed that countries should seek technical assistance within the framework of international cooperation). It reiterates this in General Comment No. 5:

"The Committee believes a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance with the Convention is an obligation. Its experience in examining not only initial but now second and third periodic reports under the Convention suggests that the review process at the national level has, in most cases, been started, but needs to be more rigorous. The review needs to consider the Convention not only article by article, but also holistically, recognizing the interdependence and indivisibility of human rights. The review needs to be continuous rather than one-off, reviewing proposed as well as existing legislation. And while it is important that this review process should be built into the machinery of all relevant government departments, it is also advantageous to have independent review by, for example, parliamentary committees and hearings, national human rights institutions, NGOs, academics, affected children and young people and others." *(Committee on the Rights of the Child, General Comment No. 5, CRC/GC/2003/5, para. 18)*

The Committee has emphasized that any systems of "customary" or regional or local law must also be reviewed and made compatible with the Convention:

"... the coexistence of customary law and statutory law does affect the implementation of the Convention in the State Party where traditional practices are not conducive to respect for children's rights." *(Burkina Faso CRC/C/15/Add.193, para. 4)*

Giving legal effect to all the rights in the Convention

The Convention proposes that States should undertake "legislative, administrative, and other measures" to implement all the rights it contains – including economic, social and cultural rights. Thus, as regards legal implementation, there is no question of the Convention being divided into two categories of rights – social/economic/cultural and civil/political – with only the latter being implemented as legally enforceable rights.

As noted above, the Convention does not identify which of its rights are "economic, social, and cultural". And in fact, it is clear that almost all articles include at least elements that constitute civil/political rights.

Although lack of available resources may restrict full implementation of some Convention rights, and no law on its own can make poverty or unacceptable inequalities disappear, this does not mean that economic, social and cultural rights cannot be defined in legislation or are non-justiciable. The Convention requires States, for example, to define a period of compulsory, free education, ages for admission to employment, and so on. Rights can be drafted as goals towards which the State undertakes to work; or the legislation can expressly include the principle of "the maximum extent of available resources".

The Committee's General Comment No. 5 discusses the varied approaches to giving effect to international instruments in domestic legislation:

"States Parties need to ensure, by all appropriate means, that the provisions of the Convention are given legal effect within their domestic legal systems. This remains a challenge in many States Parties. Of particular importance is the need to clarify the extent of applicability of the Convention in States where the principle of 'self-execution' applies and others where it is claimed that the Convention 'has constitutional status' or has been incorporated into domestic law.

"The Committee welcomes the incorporation of the Convention into domestic law, which is the traditional approach to the implementation of international human rights instruments in some but not all States. Incorporation should mean that the provisions of the Convention can be directly invoked before the courts and applied by national authorities and that the Convention will prevail where there is a conflict with domestic legislation or common practice. Incorporation by itself does not avoid the need to ensure that all relevant domestic law, including any local or customary law, is brought into compliance with the Convention. In case of any conflict in legislation, predominance should always be given to the Convention, in the light of article 27 of the Vienna Convention on the Law of Treaties. Where a State delegates powers to legislate to federated, regional or territorial governments, it must also require these subsidiary governments to legislate within the framework of the Convention and to ensure effective implementation...

"Some States have suggested to the Committee that the inclusion in their Constitution of guarantees of rights for 'everyone' is adequate to ensure respect for these rights for children. The test must be whether the applicable rights are truly realized for children and can be directly invoked before the courts. The Committee welcomes the inclusion of sections on the rights of the child in national constitutions, reflecting key principles in the Convention, which helps to underline the key message of the Convention – that children alongside adults are holders of human rights. But this inclusion does not automatically ensure respect for the rights of children. In order to promote the full implementation of these rights, including, where appropriate, the exercise of rights by children themselves, additional legislative and other measures may be necessary.

"The Committee emphasizes, in particular, the importance of ensuring that domestic law reflects the identified general principles in the Convention (arts. 2, 3, 6 and 12). The Committee welcomes the development of consolidated children's rights statutes, which can highlight and emphasize the Convention's principles. But the Committee emphasizes that it is crucial in addition that all relevant 'sectoral' laws (on education, health, justice and so on) reflect consistently the principles and standards of the Convention." (Committee on the Rights of the Child, General Comment No. 5, CRC/GC/2003/5, paras.19, 20 and 22)

The Committee continues to encourage incorporation of the Convention; so when it examined Germany's Second Report, it noted:

"The Committee is aware of the numerous laws relevant to children's rights which have been adopted since the consideration of the initial report but remains concerned that the Convention has not been incorporated into the Basic Law, as foreseen at the time of the initial report.

"In light of its previous recommendations (para. 21), the Committee recommends that the State Party... reconsider the incorporation of the Convention into the Basic Law..." (Germany CRC/C/15/Add.226, paras. 9 and 10)

And it pursues the development of comprehensive children's rights statutes or children's codes:

"The Committee notes the adoption of the Child Protection Act No. 5 of 1997, in addition to the numerous other laws and decisions that have been adopted with a view to improving the welfare of children. It is concerned, however, that many measures reflect a predominantly welfare- rather than rights-based approach. The Committee reiterates its concern that several rights contained in the Convention (e.g., non-discrimination, the best interests of the child, rights concerning juvenile justice) are not adequately reflected in the laws, including personal status laws.

"The Committee encourages the State Party: (a) To ensure that its laws, administrative

regulations and legal procedure rules conform to the provisions and principles of the Convention and to other international human right standards; in this respect, it encourages the State Party to take the necessary steps to adopt a single 'integrated' law on children's rights in order to provide a comprehensive legal foundation at the domestic level for implementation of Convention rights;
(b) To take all possible measures to reconcile the interpretation of religious laws with fundamental human rights; and
(c) To ensure that laws are based on a child-rights approach, are sufficiently clear and precise, are published, and are accessible to the public." (Libyan Arab Jamahiriya CRC/C/15/Add.209, paras. 7 and 8)

"The Committee welcomes the incorporation of numerous articles on child rights in the Constitution, which also affirms that international instruments ratified by Colombia prevail over domestic legislation. The Committee however regrets that the reform of the inadequate Minors' Code from 1989 has not yet been completed despite ten years of debate and numerous calls by United Nations entities for amendments to take place in order to bring national legislation in line with the obligations undertaken by the ratification of the Convention of the Rights of the Child…
"The Committee reiterates its concern in this regard and recommends that the State Party promptly complete the process of the reform of the Minors' Code in order to provide effective protection of the rights of all children in Colombia, taking into account the following four areas of concern in order to bring them into conformity with the Convention; juvenile justice, adoption, work and protection against abuse of children." (Colombia CRC/C/COL/CO/3, paras. 9 and 10)

Once appropriate legislation is in force, the Committee frequently alludes to problems with the implementation of it, commenting on Latvia's Second Report:

"The Committee is concerned, however, that there is a gap between law and practice, particularly in the areas of education, health care, juvenile justice and protection from violence.
"The Committee recommends that the State Party revise or amend laws where necessary, and take the necessary measures, inter alia, *by providing adequate human and financial resources, to ensure the implementation of the laws in order to bring them in full compliance with the Convention."* (Latvia, CRC/C/LVA/CO/2, paras. 9 and 10)

Remedies for breaches of rights

The Committee's General Comment No. 5 emphasizes that legislation, policy and practice must provide children with remedies when their rights are breached:

"For rights to have meaning, effective remedies must be available to redress violations. This requirement is implicit in the Convention and consistently referred to in the other six major international human rights treaties. Children's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, and advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance. Where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by article 39." (Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, para. 24)

The Committee underlines again that economic, social and cultural rights must be justiciable and to enable remedies for non-compliance with such rights to be effective, the law must set out entitlements in sufficient detail (paras. 24 and 25).

"all appropriate… administrative, and other measures…"

While noting again that the Committee cannot prescribe in detail the measures which each and every State should take to ensure effective implementation of the Convention, it suggests that it has distilled useful advice in its General Comment No. 5 from the first decade's experience of examining reports and dialogue with governments, United Nations agencies, NGOs and others. Coordination is vital:

"The Committee believes that effective implementation of the Convention requires visible cross-sectoral coordination to recognize and realize children's rights across Government, between different levels of government and between Government and civil society – including in particular children and young people themselves. Invariably, many different government departments and other governmental or quasi-governmental bodies affect children's lives and children's enjoyment of their rights. Few, if any, government departments have no effect on children's lives, direct or indirect. Rigorous monitoring of implementation is required, which should

Legislating economic, social and cultural rights

General Comments of the Committee on Economic, Social and Cultural Rights

The importance of legislative measures to implement economic, social and cultural rights is stressed in General Comments of the Committee on Economic, Social and Cultural Rights. Paragraph 1 of article 2 of the International Covenant on Economic, Social and Cultural Rights requires that: "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

General Comment No. 3

The Committee on Economic, Social and Cultural Rights comments: "Article 2 is of particular importance to a full understanding of the Covenant and must be seen as having a dynamic relationship with all of the other provisions of the Covenant. It describes the nature of the general legal obligations undertaken by States Parties to the Covenant. Those obligations include both what may be termed (following the work of the International Law Commission) obligations of conduct and obligations of result. While great emphasis has sometimes been placed on the difference between the formulations used in this provision and that contained in the equivalent article 2 of the International Covenant on Civil and Political Rights, it is not always recognized that there are also significant similarities [article 2 of the International Covenant on Civil and Political Rights requires States to "adopt such legislative or other measures as may be necessary to give effect to the rights in the present Covenant" and to ensure an "effective remedy" is available when such rights are violated.] In particular, while the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes various obligations that are of immediate effect. Of these, two are of particular importance in understanding the precise nature of States Parties' obligations. One of these, which is dealt with in a separate General Comment ... is the 'undertaking to guarantee' that relevant rights 'will be exercised without discrimination...'

"The other is the undertaking in article 2(1) 'to take steps', which, in itself, is not qualified or limited by other considerations. The full meaning of the phrase can also be gauged by noting some of the different language versions. In English the undertaking is 'to take steps', in French it is 'to act' (*s'engage à agir*) and in Spanish it is 'to adopt measures' (*a adoptar medidas*). Thus, while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short term after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete, and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.

"The means which should be used in order to satisfy the obligation to take steps are stated in article 2(1) to be 'all appropriate means, including in particular the adoption of legislative measures'. The Committee recognizes that in many instances legislation is highly desirable and in some cases may even be indispensable. For example, it may be difficult to combat discrimination effectively in the absence of a sound legislative foundation for the necessary measures. In fields such as health, the protection of children and mothers, and education, as well as in respect of the matters dealt with in articles 6 to 9 [employment and social security rights] legislation may also be an indispensable element for many purposes…

"Among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable… "Where specific policies aimed directly at the realization of the rights recognized in the Covenant have been adopted in legislative form, the Committee would wish to be informed, *inter alia*, as to whether such laws create any right of action on behalf of individuals or groups who feel that their rights are not being fully realized. In cases where constitu-

tional recognition has been accorded to specific economic, social and cultural rights, or where the provisions of the Covenant have been incorporated directly into national law, the Committee would wish to receive information as to the extent to which these rights are considered to be justiciable (i.e., able to be invoked before the courts). The Committee would also wish to receive specific information as to any instances in which existing constitutional provisions relating to economic, social and cultural rights have been weakened or significantly changed."

(Committee on Economic, Social and Cultural Rights, General Comment No. 3, 1990, HRI/GEN/1/Rev.8, paras 1, 2, 3 and 5, pp. 15 and 16)

In 1998, in another General Comment, the Committee on Economic, Social and Cultural Rights expanded on States' obligations to recognize the norms in the International Covenant in domestic law.

General Comment No. 8

It emphasizes that "appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring government accountability must be put in place". It quotes two relevant principles of international law: "The first, as reflected in article 27 of the Vienna Convention on the Law of Treaties, is that '[A] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty'. In other words, States should modify the domestic legal order as necessary in order to give effect to their treaty obligations. The second principle is reflected in article 8 of the Universal Declaration of Human Rights, according to which 'Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law'."

The General Comment notes that "In general, legally binding international human rights standards should operate directly and immediately within the domestic legal system of each State Party, thereby enabling individuals to seek enforcement of their rights before national courts and tribunals. The rule requiring the exhaustion of domestic remedies reinforces the primacy of national remedies in this respect. The existence and further development of international procedures for the pursuit of individual claims is important, but such procedures are ultimately only supplementary to effective national remedies."

The General Comment indicates that the Covenant does not specify particular means of implementation, but that the means chosen must be adequate to fulfil obligations; while the Covenant does not formally require States to incorporate its provisions into domestic law, "such an approach is desirable".

In relation to the justiciability of economic, social and cultural rights in the Covenant, the General Comment suggests that "there is no Covenant right, which could not, in the great majority of systems, be considered to possess at least some significant justiciable dimensions. It is sometimes suggested that matters involving the allocation of resources should be left to the political authorities rather than the courts. While the respective competences of the various branches of government must be respected, it is appropriate to acknowledge that courts are generally already involved in a considerable range of matters which have important resource implications. The adoption of a rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society."

The General Comment also emphasizes the importance of courts applying the principles of the Covenant either directly or as interpretive standards.

(Committee on Economic, Social and Cultural Rights, General Comment No. 9, 1998, HRI/GEN/1/Rev.8, pp. 55 to 59)

be built into the process of government at all levels but also independent monitoring by national human rights institutions, NGOs and others." (Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, para. 27)

A "comprehensive national strategy" for children

The Committee, often quoting the principle of "first call for children", promoted at the World Summit for Children, has emphasized that children must be accorded a high, or higher, priority. In stressing the need for a comprehensive approach to the implementation of children's rights, the Committee has frequently promoted the need for a national policy or comprehensive national strategy reflecting the implementation of the whole Convention.

It gives more detailed advice about the development and contents of such a strategy in General Comment No. 5:

"The Committee commends the development of a comprehensive national strategy or national plan of action for children, built on the framework of the Convention. The Committee expects States Parties to take account of the recommendations in its Concluding Observations on their periodic reports when developing and/or reviewing their national strategies. If such a strategy is to be effective, it needs to relate to the situation of all children, and to all the rights in the Convention. It will need to be developed through a process of consultation, including with children and young people and those living and working with them… Meaningful consultation with children requires special child-sensitive materials and processes; it is not simply about extending to children access to adult processes.

"Particular attention will need to be given to identifying and giving priority to marginalized and disadvantaged groups of children. The non-discrimination principle in the Convention requires that all the rights guaranteed by the Convention should be recognized for all children within the jurisdiction of States… The non-discrimination principle does not prevent the taking of special measures to diminish discrimination.

"To give the strategy authority, it will need to be endorsed at the highest level of government. Also, it needs to be linked to national development planning and included in national budgeting; otherwise, the strategy may remain marginalized outside key decision-making processes.

"The strategy must not be simply a list of good intentions; it must include a description of a sustainable process for realizing the rights of children throughout the State; it must go beyond statements of policy and principle, to set real and achievable targets in relation to the full range of economic, social and cultural and civil and political rights for all children. The comprehensive national strategy may be elaborated in sectoral national plans of action – for example for education and health – setting out specific goals, targeted implementation measures and allocation of financial and human resources. The strategy will inevitably set priorities, but it must not neglect or dilute in any way the detailed obligations which States Parties have accepted under the Convention. The strategy needs to be adequately resourced, in human and financial terms.

"Developing a national strategy is not a one-off task. Once drafted the strategy will need to be widely disseminated throughout Government and to the public, including children (translated into child-friendly versions as well as into appropriate languages and forms). The strategy will need to include arrangements for monitoring and continuous review, for regular updating and for periodic reports to parliament and to the public." (Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, paras. 29 to 33)

Various global meetings, including the World Summit for Children (1990), the World Conference on Human Rights (1993) and the United Nations General Assembly's special session on children (2002), have called for the development of national plans of action. The Committee welcomes commitments made by States to achieve the goals and targets set at the 2002 special session on children and identified in its outcome document, *A World Fit for Children*:

"But the Committee emphasizes that making particular commitments at global meetings does not in any way reduce States Parties' legal obligations under the Convention. Similarly, preparing specific plans of action in response to the special session does not reduce the need for a comprehensive implementation strategy for the Convention. States should integrate their response to the 2002 special session and to other relevant global conferences into their overall implementation strategy for the Convention as a whole.

"The outcome document also encourages States Parties to 'consider including in their reports to the Committee on the Rights of the Child information on measures taken and results achieved in the implementation of the present Plan of Action'. The Committee endorses this proposal; it is committed to monitoring progress towards meeting the commitments made at the special session and will provide further guidance in its revised guidelines for periodic reporting under the

Convention." *(Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, paras. 35 and 36)*

Thus, when it examined Italy's Second Report, it proposed that the State should expedite adoption of the National Plan of Action and

"Ensure harmonization between the National Plan of Action and the plan for the implementation of the UNGASS outcome document." *(Italy CRC/C/15/Add.198, para. 13)*

Similarly, the Committee told India to

"... take all necessary measures to adopt, in consultation with all relevant partners, including the civil society, a new Plan of Action for Children that covers all areas of the Convention, includes the Millennium Development Goals, and fully reflects 'A world fit for children'..." *(India CRC/C/15/Add.228, para. 16)*

Coordinating implementation: need for permanent government mechanisms

The Committee has made clear that it sees the process of implementation as a continuing process requiring "permanent" mechanisms in government. Coordination is the key aim, as well as increasing visibility of children in government.

Again, the Committee emphasizes that it is not advisable for it to attempt to prescribe detailed arrangements appropriate for very different systems of government across States Parties:

"There are many formal and informal ways of achieving effective coordination, including for example inter-ministerial and interdepartmental committees for children. The Committee proposes that States Parties, if they have not already done so, should review the machinery of government from the perspective of implementation of the Convention and in particular of the four articles identified as providing general principles...

"Many States Parties have with advantage developed a specific department or unit close to the heart of Government, in some cases in the President's or Prime Minister's or Cabinet office, with the objective of coordinating implementation and children's policy. As noted above, the actions of virtually all government departments impact on children's lives. It is not practicable to bring responsibility for all children's services together into a single department, and in any case doing so could have the danger of further marginalizing children in Government. But a special unit, if given high-level authority - reporting directly, for example, to the Prime Minister, the President or a Cabinet Committee on children – can contribute both to the overall purpose of making children more visible in Government and to coordination to ensure respect for children's rights across Government and at all levels of Government. Such a unit can be given responsibility for developing the comprehensive children's strategy and monitoring its implementation, as well as for coordinating reporting under the Convention." *(Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, para. 39)*

One of the most common "subjects of concern" expressed by the Committee in its Concluding Observations on States Parties' reports has been a lack of coordination, and it has made frequent recommendations for "effective coordination". One product of coordination across government is the comprehensive national strategy or plan of action for children. This then in turn becomes the framework for coordinated action for the realization of children's rights, as for example, in the Committee's recommendations to Mauritius:

"The Committee recommends that the State Party strengthen coordination between the various governmental mechanisms involved in children's rights, at both the national and local levels, with a view to developing a comprehensive policy on children and ensuring effective evaluation of the implementation of the Convention in the country." *(Mauritius CRC/C/15/Add.64, para. 23)*

When it examined the Second Report from Mauritius in 2006, the Committee commented:

"While noting the role of the Ministry of Women's Rights, Child Development, Family Welfare and Consumer Protection, the Committee is concerned about the fact that coordination between the different government departments and institutions dealing with children's rights is insufficient.

"The Committee recommends that the State Party further strengthen the coordination between the various bodies and institutions at all levels and pay particular attention to the various regions of the State Party." *(Mauritius, CRC/C/MUS/CO/2, paras. 12 and 13)*

The Committee has referred to lack of coordination between government departments and ministries and other governmental bodies, between federal or central government and provincial, regional or local government, between government and public and private bodies, including non-governmental organizations dealing with human rights and children's rights, and between such bodies themselves.

Decentralization and federalization

The Committee has criticized over-centralization of decision-making and policy implementation, but also drawn attention to the threat

decentralization can pose to the realization of the rights of the child:

"While welcoming the decentralization process undertaken by the State Party, the Committee is concerned that it could have a negative impact on the protection of human rights and child rights.
"The Committee recommends that the State Party work to ensure that the provincial law and practices are in conformity with the Convention." (Indonesia CRC/C/15/Add.223, paras. 16 and 17)

"In view of the current trend towards decentralization in the State Party, the Committee is concerned about the sustainability of the funding for the provision of health, education and social services for children. It is also concerned by the absence of a regulating and monitoring mechanism to ensure appropriate distribution of resources to children by local authorities." (Hungary CRC/C/15/Add.87, para. 10)

It reiterated these concerns when it examined Hungary's Second Report in 2006, commenting that the Child Protection Act of 1997 placed responsibilities on the counties and local authorities, without providing them with sufficient means to establish effective services. The Committee recommended that the obligations placed on counties and local authorities should be reassessed and they should be supported with sufficient human and financial resources to establish an effective child protection system and adequate child welfare services (Hungary CRC/C/HUN/CO/2, paras. 7 and 8).

In its General Comment No. 5, the Committee emphasizes that devolution does not reduce the State's obligations:

"The Committee has found it necessary to emphasize to many States that decentralization of power, through devolution and delegation of government, does not in any way reduce the direct responsibility of the State Party's Government to fulfil its obligations to all children within its jurisdiction, regardless of the State's structure.
"The Committee reiterates that in all circumstances the State which ratified or acceded to the Convention remains responsible for ensuring the full implementation of the Convention throughout the territories under its jurisdiction. In any process of devolution, States Parties have to make sure that the devolved authorities do have the necessary financial, human and other resources effectively to discharge responsibilities for the implementation of the Convention. The Governments of States Parties must retain powers to require full compliance with the Convention by devolved administrations or local authorities and must establish permanent monitoring mechanisms to ensure that the Convention is respected and applied for all children within its jurisdiction without discrimination. Further, there must be safeguards to ensure that decentralization or devolution does not lead to discrimination in the enjoyment of rights by children in different regions." (Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, paras. 40 and 41)

So the Committee told Canada, following examination of its Second Report:

"The Committee notes that the application of a considerable part of the Convention falls within the competence of the provinces and territories, and is concerned that this may lead, in some instances, to situations where the minimum standards of the Convention are not applied to all children owing to differences at the provincial and territorial level.
"The Committee urges the Federal Government to ensure that the provinces and territories are aware of their obligations under the Convention and that the rights in the Convention have to be implemented in all the provinces and territories through legislation and policy and other appropriate measures." (Canada CRC/C/15/Add.215, paras. 8 and 9)

Privatization

The Committee notes in its General Comment that the process of privatization of services can have a serious impact on the recognition and realization of children's rights. The Committee devoted its 2002 Day of General Discussion to the theme "The private sector as service provider and its role in implementing child rights", defining the private sector as including businesses, NGOs and other private associations, both for profit and not-for-profit (Report on the twenty-ninth session, January/February 2002, CRC/C/114, pp. 187 *et seq.*). Following that Day of General Discussion, the Committee adopted detailed recommendations which it refers to in General Comment No. 5:

"The Committee emphasizes that States Parties to the Convention have a legal obligation to respect and ensure the rights of children as stipulated in the Convention, which includes the obligation to ensure that non-state service providers operate in accordance with its provisions, thus creating indirect obligations on such actors.
"The Committee emphasizes that enabling the private sector to provide services, run institutions and so on does not in any way lessen the State's obligation to ensure for all children within its jurisdiction the full recognition and realization of all rights in the Convention (arts. 2(1) and 3(2)). Article 3(1) establishes that the best interests of the child shall be a primary consideration in all actions

concerning children, whether undertaken by public or private bodies. Article 3(3) requires the establishment of appropriate standards by competent bodies (bodies with the appropriate legal competence), in particular, in the areas of health, and with regard to the number and suitability of staff. This requires rigorous inspection to ensure compliance with the Convention. The Committee proposes that there should be a permanent monitoring mechanism or process aimed at ensuring that all State and non-State service providers respect the Convention." (Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, paras. 42 to 44. See also article 3(2), page 40 and article 3(3), page 41.)

When it examined Lebanon's Third Report, the Committee expressed appreciation at the State's close collaboration with non-governmental organizations and the active role of civil society in the implementation of the rights of the child and in the provision of education, health and social services. But it continued:

"As regards the process of privatizing or contracting out services to non-governmental organizations, the Committee notes with concern the weak accountability and transparency of this process, as well as the lack of critical information provided by external monitoring and assessment mechanisms.
"The Committee recommends that the State Party take into account the recommendations adopted on its Day of General Discussion on the Private Sector as Service Provider and its Role in Implementing Child Rights (CRC/C/121) and:
(a) Continue to strengthen its cooperation with non-governmental organizations, and involve them systematically at all stages in the implementation of the Convention, as well as in policy formulation;
(b) Provide non-governmental organizations with adequate financial and other resources when they are involved in discharging governmental responsibilities and duties with regard to the implementation of the Convention;
(c) Ensure, for example, by providing guidelines and standards for service provision that non-governmental organizations, both for-profit as well as not-for-profit, fully comply with the principles and provisions of the Convention on the Rights of the Child; and
(d) When privatizing or contracting out services to non-governmental organizations, enter into detailed agreements with the service providers, ensure effective monitoring of implementation as well as transparency of the entire process." (Lebanon CRC/C/LBN/CO/3, paras. 21 and 22)

Child impact analysis

The Committee has looked for processes which ensure that children's best interests are a primary consideration in all actions concerning children (see article 3, page 38). In General Comment No. 5, it sets out the implications:

"Ensuring that the best interests of the child are a primary consideration in all actions concerning children (art. 3(1)), and that all the provisions of the Convention are respected in legislation and policy development and delivery at all levels of government demands a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation). This process needs to be built into government at all levels and as early as possible in the development of policy.
"Self-monitoring and evaluation is an obligation for Governments. But the Committee also regards as essential the independent monitoring of progress towards implementation by, for example, parliamentary committees, NGOs, academic institutions, professional associations, youth groups and independent human rights institutions…
"The Committee commends certain States which have adopted legislation requiring the preparation and presentation to parliament and/or the public of formal impact analysis statements. Every State should consider how it can ensure compliance with article 3(1) and do so in a way which further promotes the visible integration of children in policy-making and sensitivity to their rights." (Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, paras. 45 to 47)

Budgeting and budgetary analysis

The Committee has emphasized that States' obligation to implement economic, social and cultural rights "to the maximum extent of their available resources" implies adequate budgetary analysis.

It is extremely rare for children to be as visible in the economic policies of government as the Committee implies they should be. Most government departments have no idea what proportion of their budget is spent on children, few know what impact their expenditure has on children. The Committee has emphasized that monitoring and evaluation in this sphere, as in all others, is essential for effective implementation strategies, as General Comment No. 5 sets out:

"In its reporting guidelines and in the consideration of States Parties' reports, the Committee has paid much attention to the identification and analysis of resources for children in national and other budgets. No State can tell whether it is fulfilling children's economic, social and cultural rights 'to the maximum extent of … available resources', as it is required to do under article 4, unless

it can identify the proportion of national and other budgets allocated to the social sector and, within that, to children, both directly and indirectly. Some States have claimed it is not possible to analyse national budgets in this way. But others have done it and publish annual 'children's budgets'. The Committee needs to know what steps are taken at all levels of Government to ensure that economic and social planning and decision-making and budgetary decisions are made with the best interests of children as a primary consideration and that children, including in particular marginalized and disadvantaged groups of children, are protected from the adverse effects of economic policies or financial downturns." (Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, para. 51)

The Committee has made various consistent comments on budgetary issues in its examination of States Parties' reports, almost invariably seeking more analysis and information. The overall proportion of national and local budgets allocated to social programmes must be adequate, and there must be sufficient budgetary provision to protect and promote children's rights. Lack of available resources cannot be used as a reason for not establishing social security programmes and social safety nets. For example:

"The Committee is concerned about the very limited information on budget allocations for the implementation of the CRC. These allocations seem to be insufficient to respond to national and local priorities for the protection and promotion of children's rights.
"The Committee recommends that the State Party pay particular attention to the full implementation of article 4 of the Convention by increasing and prioritizing budgetary allocations to ensure at all levels the implementation of the rights of the child and that particular attention is paid to the protection of the rights of children belonging to vulnerable groups including children with disabilities, children affected or/and infected by HIV/AIDS, street children and children living in poverty. It further recommends that the State Party provide specific and detailed information on the allocations of these budgets at the national and district level." (Ghana CRC/C/GHA/CO/2, paras. 17 and 18)

"The Committee regrets the lack of clear information on budget allocations and is concerned that one of the major causes of poverty in Colombia is the unequal distribution of state funds, which severely impacts on the well-being of children, in particular affecting those from more vulnerable sectors of society. In particular, the Committee is deeply concerned over the declining expenditure for education, health and welfare services, all essential to the realization of the right of the child.
"The Committee strongly recommends that the State Party, in accordance with article 4 of the Convention, increase budget allocations for the implementation of the rights recognized in the Convention, ensure a more balanced distribution of resources throughout the country and prioritize budgetary allocations to ensure implementation of the economic, social and cultural rights of all children, including those belonging to financially disadvantaged groups, such as Afro-Colombian and indigenous children." (Colombia CRC/C/COL/CO/3, paras. 20 and 21)

"The Committee expresses its concern that budgetary allocations for children, in particular in the fields of health and education, are insufficient and that often the resources allocated do not correspond to the needs. It further notes that the decentralization process started in 1999 is held back by limited financial and human resources.
"In light of article 4 of the Convention, the Committee encourages the State Party:
(a) To enforce effectively the Preliminary Poverty Reduction Strategy;
(b) To identify clearly its priorities with respect to child rights issues in order to ensure that funds are allocated 'to the maximum extent of … available resources'. The Committee fully supports the State Party in seeking international cooperation for the full implementation of the economic, social and cultural rights of children, in particular children belonging to the most vulnerable groups in society;
(c) To identify the amount and proportion of the budget spent on children at the national and local levels in order to evaluate the impact of expenditures on children." (Moldova CRC/C/15/Add.192, paras. 14 and 15)

National bodies concerned with overall budgeting should be linked directly to those developing policy for children and implementation of the Convention:

"… the Committee suggests that the ministries responsible for overall planning and budgeting be fully involved in the activities of the Higher Committee on Child Welfare and the National Committee on Children, with a view to ensuring that their decisions have a direct and immediate impact on the budget." (Syrian Arab Republic CRC/C/15/Add.70, para. 26)

The Committee has expressed concern at the impact of tax evasion and corruption on available resources. Examining the Third Report of the Russian Federation, the Committee expressed serious concern

"… that widespread corruption, inter alia, *in the health and education sectors as well as in*

adoption procedures, is affecting children in full enjoyment of their rights."

It went on to recommend:

"The State Party should seriously address and take all necessary measures to prevent corruption." *(Russian Federation CRC/C/RUS/CO/3, paras. 19 and 20)*

"Concern is also expressed at the widespread practices of tax evasion and corruption which are believed to have an effect on the level of resources available for the implementation of the Convention.
"The Committee recommends that the State Party undertake all appropriate measures to improve its system of tax collection and reinforce its efforts to eradicate corruption." *(Georgia CRC/C/15/Add.124, paras. 18 and 19)*

Effects of transition to market economy and other forced economic adjustments

The Committee has been highly sensitive to the impact on children of the world recession, economic adjustments and cutbacks that have occurred during the 1990s. It endorsed the following recommendation during its 1999 two-day tenth anniversary workshop:

"The Committee calls attention to the fact that economic policies are never child-rights neutral. The Committee calls on civil society to assist it in seeking the support of key international leaders, and in particular the High Commissioner for Human Rights, the Executive Director of UNICEF, and the President of the World Bank, to examine how macro-economic and fiscal policies impact on children's rights, and how these policies can be reformed so as to make them more beneficial to the implementation of the rights of the child." *(Report on the twenty-second session, September/October 1999, CRC/C/90, para. 291 (m))*

The Committee has expressed consistent concern at the effects of transition to a market economy on children and echoes this in General Comment No. 5 :

"Emphasizing that economic policies are never neutral in their effect on children's rights, the Committee has been deeply concerned by the often negative effects on children of structural adjustment programmes and transition to a market economy. The implementation duties of article 4 and other provisions of the Convention demand rigorous monitoring of the effects of such changes and adjustment of policies to protect children's economic, social and cultural rights." *(Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, para. 52)*

States must minimize the negative effects of structural adjustment programmes, and any spending cuts on children; and the needs of the most vulnerable groups of children must be given priority. For example:

"The Committee urges the Government of Peru to take all the necessary steps to minimize the negative impact of the structural adjustment policies on the situation of children. The authorities should, in the light of articles 3 and 4 of the Convention, undertake all appropriate measures to the maximum extent of their available resources to ensure that sufficient resources are allocated to children..." *(Peru CRC/C/15/Add.8, para. 19)*

"... Budgetary allocations for the implementation of economic, social and cultural rights should be ensured during the period of transition to market economy to the maximum extent of available resources and in the light of the best interests of the child." *(Ukraine CRC/C/15/Add.42, para. 20)*

The Committee returned to these issues in detail when it examined Ukraine's Second Report:

"The Committee notes the priority accorded by the State Party to health and education and the information that the budget has been increased for 2000-2001. However, the Committee remains concerned about the low level of resources in general for social services, health and education, which has a negative impact on the quality and accessibility of services, especially affecting families with children living in poverty. The Committee is also concerned that the 'Children of Ukraine' programme is not accorded adequate funding. The Committee is further concerned that readjustment programmes may have a disproportionately negative effect on children if not appropriately addressed in the planning and budgeting of social services.
"In light of articles 2, 3 and 6 of the Convention, the Committee recommends that the State Party pay particular attention to the full implementation of article 4 of the Convention by:
(a) Further continuing to increase the budget for the implementation of the Convention and prioritizing budgetary allocations to ensure implementation of economic, social and cultural rights of children to the maximum extent of available resources, in particular to socially marginalized groups, taking into account the decentralization of the provision of social services and of public finances;
(b) Strengthening its efforts to implement the poverty reduction strategy (2001);
(c) Ensuring sufficient resources for the full implementation of state programmes and policies for children, including 'Children of Ukraine';
(d) Identifying the amount and proportion of the State's budget spent on children through public and private institutions or organizations

in order to evaluate the impact of the expenditures and also, in view of the costs, the accessibility, the quality and the effectiveness of the services for children in the different sectors." (Ukraine CRC/C/15/Add.191, paras. 17 and 18)

Economic sanctions and respect for economic, social and cultural rights

The Committee on Economic, Social and Cultural Rights issued a General Comment in 1997 on the relationship between economic sanctions and respect for economic, social and cultural rights. The Committee notes that economic sanctions "almost always have a dramatic impact on the rights recognized in the Covenant [International Covenant on Economic, Social and Cultural Rights]. Thus, for example, they often cause significant disruption in the distribution of food, pharmaceuticals and sanitation supplies, jeopardize the quality of food and the availability of clean drinking water, severely interfere with the functioning of basic health and education systems, and undermine the right to work...".

The General Comment emphasizes the importance of reducing to a minimum the negative impact of sanctions on vulnerable groups within the society – including children: "In adopting this General Comment the sole aim of the Committee is to draw attention to the fact that the inhabitants of a given country do not forfeit their basic economic, social and cultural rights by virtue of any determination that their leaders have violated norms relating to international peace and security. The aim is not to give support or encouragement to such leaders, nor is it to undermine the legitimate interests of the international community in enforcing respect for the provisions of the Charter of the United Nations and the general principles of international law. Rather, it is to insist that lawlessness of one kind should not be met by lawlessness of another kind which pays no heed to the fundamental rights that underlie and give legitimacy to any such collective action." (Committee on Economic, Social and Cultural Rights, General Comment No. 8, 1997, HRI/GEN/1/Rev.8, pp. 51 to 55)

The Committee on the Rights of the Child has drawn attention to this General Comment in its Concluding Observations on certain States which have experienced sanctions.

Monitoring and data collection

The Committee has frequently noted that without sufficient data collection, including disaggregated data, it is impossible to assess the extent to which the Convention has been implemented. In General Comment No. 5, the Committee emphasizes that "*self-monitoring and evaluation is an obligation for governments*". But the Committee also regards independent monitoring of progress towards implementation as essential, including by, for example, parliamentary committees, NGOs, academic institutions, professional associations, youth groups and independent human rights institutions. General Comment No. 5 states:

"Collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realization of rights, is an essential part of implementation. The Committee reminds States Parties that data collection needs to extend over the whole period of childhood, up to the age of 18 years. It also needs to be coordinated throughout the jurisdiction, ensuring nationally applicable indicators. States should collaborate with appropriate research institutes and aim to build up a complete picture of progress towards implementation, with qualitative as well as quantitative studies. The reporting guidelines for periodic reports call for detailed disaggregated statistical and other information covering all areas of the Convention. It is essential not merely to establish effective systems for data collection, but to ensure that the data collected are evaluated and used to assess progress in implementation, to identify problems and to inform all policy development for children. Evaluation requires the development of indicators related to all rights guaranteed by the Convention.

"The Committee commends States Parties which have introduced annual publication of comprehensive reports on the state of children's rights throughout their jurisdiction. Publication and wide dissemination of and debate on such reports, including in parliament, can provide a focus for broad public engagement in implementation. Translations, including child-friendly versions, are essential for engaging children and minority groups in the process.

"The Committee emphasizes that, in many cases, only children themselves are in a position to indicate whether their rights are being fully recognized and realized. Interviewing children and using children as researchers (with appropriate safeguards) is likely to be an important way of finding out, for example, to what extent their civil rights, including the crucial right set out in article 12, to have their views heard and given due consideration, are respected within the family, in schools and so on." (Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, paras. 48 to 50)

In its *Guidelines for Periodic Reports (Revised 2005)* the Committee asks for detailed statistical and other information under most articles (see Appendix 3, page 701, Annex).

The Committee sets out the independent monitoring role of national human rights institutions in its General Comment No. 2 (2002) on "The role of independent national human rights institutions in the protection and promotion of the rights of the child":

"The role of national human rights institutions is to monitor independently the State's compliance and progress towards implementation and to do all it can to ensure full respect for children's rights. While this may require the institution to develop projects to enhance the promotion and protection of children's rights, it should not lead to the Government delegating its monitoring obligations to the national institution. It is essential that institutions remain entirely free to set their own agenda and determine their own activities." *(Committee on the Rights of the Child, General Comment No. 2, 2002, CRC/GC/2002/2, para. 25)*

General Comment No. 2 provides detailed guidance on the establishment and operation of independent human rights institutions for children – see below, page 68. (For full text see www.ohchr.org/english/bodies/crc/comments.htm.)

Participation of civil society

The Committee has stressed that, while implementation is an obligation for States Parties, coordination and action to implement the Convention should extend beyond government to all segments of society. General Comment No. 5 expands on this:

"Implementation is an obligation for States Parties, but needs to engage all sectors of society, including children themselves. The Committee recognizes that responsibilities to respect and ensure the rights of children extend in practice beyond the State and State-controlled services and institutions to include children, parents and wider families, other adults, and non-State services and organizations…

"Article 12 of the Convention, as already emphasized …, requires due weight to be given to children's views in all matters affecting them, which plainly includes implementation of 'their' Convention.

"The State needs to work closely with NGOs in the widest sense, while respecting their autonomy; these include, for example, human rights NGOs, child- and youth-led organizations and youth groups, parent and family groups, faith groups, academic institutions and professional associations. NGOs played a crucial part in the drafting of the Convention and their involvement in the process of implementation is vital.

"The Committee welcomes the development of NGO coalitions and alliances committed to promoting, protecting and monitoring children's human rights and urges Governments to give them non-directive support and to develop positive formal as well as informal relationships with them. The engagement of NGOs in the reporting process under the Convention, coming within the definition of 'competent bodies' under article 45(a), has in many cases given a real impetus to the process of implementation as well as reporting. The NGO Group for the Convention on the Rights of the Child has a very welcome, strong and supportive impact on the reporting process and other aspects of the Committee's work. The Committee underlines in its reporting guidelines that the process of preparing a report 'should encourage and facilitate popular participation and public scrutiny of government policies'. The media can be valuable partners in the process of implementation." *(Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, paras. 56 to 59)*

In examining States' reports, the Committee often calls for a systematic approach to involvement of NGOs, and often highlights the need to engage with children's organizations. For example:

"Despite the existence of a vibrant civil society, the Committee is concerned that non-governmental organizations are not fully involved in the Government's efforts to implement the Convention.

"The Committee emphasizes the important role civil society plays as a partner in implementing the provisions of the Convention, and recommends that the State Party involve non-governmental organizations in a more systematic and coordinated manner throughout all stages of the implementation of the Convention, including policy formulation, at the national and local levels." *(Poland CRC/C/15/Add.194, paras. 21 and 22)*

"The Committee notes the information on good government cooperation with national associations in the development and welfare sectors, as well as with international organizations. However, it is concerned that little effort has been made to actively involve civil society, particularly in the area of civil rights and freedoms, in the implementation of the Convention.

"The Committee recommends that the State Party:

(a) Adopt a systematic approach to involving civil society, including children's associations, throughout all stages in the implementation of the Convention, including with respect to civil rights and freedoms;

(b) Ensure that legislation regulating NGOs (e.g., the Private Associations and Institutions Act No. 93 of 1958) conforms to article 15 of the Convention and other international

standards on freedom of association, as a step in facilitating and strengthening their participation." (Syrian Arab Republic CRC/C/15/Add.Add.212, paras. 19 and 20)

Awareness-raising and training

The Committee has linked the obligation under article 42, to make the provisions and principles of the Convention widely known to adults and children alike, to article 4, as a general measure of implementation. In the overall process of awareness-raising, the Committee has emphasized the importance of incorporating the Convention in the school curriculum as well as in training for those working with and for children (General Comment No. 5 includes discussion of article 42; see page 627).

Independent human rights institutions for children

The Committee believes that every State needs an independent human rights institution with responsibility for promoting and protecting children's rights. In its General Comment No. 2 on "The role of independent national human rights institutions in the promotion and protection of children's rights" (CRC/GC/2002/2), the Committee notes that its principal concern is that the institution, whatever its form, should be able, independently and effectively, to monitor, promote and protect children's rights. When it examines States' reports, the Committee consistently recommends the establishment of independent human rights institutions – a children's ombudsman, commission or commissioner, or a focal point on children's rights developed within a national human rights commission or general ombudsman institution. So, for example, the Committee told Azerbaijan:

"The Committee recommends that the State Party, taking into account the Committee's general comment No. 2 on the role of independent national human rights institutions in the promotion and protection of the rights of the child (CRC/GC/2002/2), include within the Office of the Ombudsman either an identifiable commissioner specifically responsible for children's rights or a specific section or division responsible for children's rights. Furthermore, it should be provided with adequate human and financial resources, deal with complaints from children in a child-sensitive and expeditious manner and provide remedies for violations of their rights under the Convention." (Azerbaijan CRC/C/AZE/CO/2, para. 15)

Where such institutions have already been established, the Committee calls upon States to review their status and effectiveness for promoting and protecting children's rights. So when it examined Sweden's Third Report, the Committee commented:

"The Committee welcomes the enactment of the 2002 Bill reinforcing the role of the Children's Ombudsman and notes with appreciation the many activities undertaken by the Children's Ombudsman for the implementation of children's rights. It is, however, the view of the Committee that further improvements can be accomplished. The Committee recommends that:
(a) The State Party consider providing the Children's Ombudsman with the mandate to investigate individual complaints;
(b) The annual report of the Children's Ombudsman be presented to the Parliament, together with information about measures the Government intends to take to implement the recommendations of the Children's Ombudsman." (Sweden CRC/C/15/Add. 248, paras. 6 and 7)

The Committee explains that while adults and children alike need independent national human rights institutions (NHRIs) to protect their human rights, additional justifications exist for ensuring that child's human rights are given special attention:

"These include the facts that children's developmental state makes them particularly vulnerable to human rights violations; their opinions are still rarely taken into account; most children have no vote and cannot play a meaningful role in the political process that determines Governments' response to human rights; children encounter significant problems in using the judicial system to protect their rights or to seek remedies for violations of their rights; and children's access to organizations that may protect their rights is generally limited." (Committee on the Rights of the Child, General Comment No. 2, 2002, CRC/GC/2002/2, para. 5)

The Committee notes that specialist independent human rights institutions for children, ombudspersons or commissioners for children's rights, have been established in a growing number of States Parties. Where resources are limited, consideration must be given to ensuring that the available resources are used most effectively for the promotion and protection of everyone's human rights, including children's, and in this context development of a broad-based NHRI that includes a specific focus on children is likely to constitute the best approach. A broad-based NHRI should include within its structure either an identifiable commissioner specifically responsible for children's rights, or a specific section or division responsible for children's rights. The Committee underlines that it is essential that promotion and protection of children's rights is "mainstreamed" and that all human rights

institutions existing in a country work closely together to this end (CRC/GC/2002/2, para. 6).

The General Comment emphasizes that NHRIs should be established in compliance with the Principles relating to the status of national institutions for the promotion and protection of human rights (The Paris Principles), adopted by the General Assembly in 1993. These minimum standards provide guidance for the establishment, competence, responsibilities, composition, independence, methods of operation, and quasi-judicial activities of such national bodies (CRC/GC/2002/2, para. 4. For full text of Paris Principles, see A/RES/48/134.)

They should, if possible, be constitutionally entrenched and must at least be established in legislation:

"It is the view of the Committee that their mandate should include as broad a scope as possible for promoting and protecting human rights, incorporating the Convention on the Rights of the Child, its Optional Protocols and other relevant international human rights instruments – thus effectively covering children's human rights, in particular their civil, political, economic, social and cultural rights…
"NHRIs should be accorded such powers as are necessary to enable them to discharge their mandate effectively, including the power to hear any person and obtain any information and document necessary for assessing the situations falling within their competence. These powers should include the promotion and protection of the rights of all children under the jurisdiction of the State Party in relation not only to the State but to all relevant public and private entities." *(Committee on the Rights of the Child, General Comment No. 2, 2002, CRC/GC/2002/2, paras. 8 and 9)*

NHRIs must also have the right

"… to report directly, independently and separately on the state of children's rights to the public and to parliamentary bodies. In this respect, States Parties must ensure that an annual debate is held in Parliament to provide parliamentarians with an opportunity to discuss the work of the NHRI in respect of children's rights and the State's compliance with the Convention." *(CRC/GC/2002/2, para. 18)*

NHRIs should be established through a consultative, inclusive and transparent process. They should have appropriate and transparent appointment procedures, including an open and competitive selection process (CRC/GC/2002/2, para. 12). In order to secure their independence, they must have adequate resources and funding and freedom from forms of financial control that might affect their independence (CRC/GC/2002/2, para. 10). They must have the power to consider individual complaints and petitions and to carry out investigations, including those submitted on behalf of or directly by children:

"In order to be able to effectively carry out such investigations, they must have the powers to compel and question witnesses, access relevant documentary evidence and access places of detention. They also have a duty to seek to ensure that children have effective remedies – independent advice, advocacy and complaints procedures – for any breaches of their rights. Where appropriate, NHRIs should undertake mediation and conciliation of complaints.
"NHRIs should have the power to support children taking cases to court, including the power (a) to take cases concerning children's issues in the name of the NHRI and (b) to intervene in court cases to inform the court about the human rights issues involved in the case." *(Committee on the Rights of the Child, General Comment No. 2, 2002, CRC/GC/2002/2, paras. 13 and 14)*

The Committee highlights the importance of institutions establishing and maintaining direct contact with children:

"NHRIs should be geographically and physically accessible to all children. In the spirit of article 2 of the Convention, they should proactively reach out to all groups of children, in particular the most vulnerable and disadvantaged, such as (but not limited to) children in care or detention, children from minority and indigenous groups, children with disabilities, children living in poverty, refugee and migrant children, street children and children with special needs in areas such as culture, language, health and education. NHRI legislation should include the right of the institution to have access in conditions of privacy to children in all forms of alternative care and to all institutions that include children.
"NHRIs have a key role to play in promoting respect for the views of children in all matters affecting them, as articulated in article 12 of the Convention, by Government and throughout society. This general principle should be applied to the establishment, organization and activities of national human rights institutions. Institutions must ensure that they have direct contact with children and that children are appropriately involved and consulted. Children's councils, for example, could be created as advisory bodies for NHRIs to facilitate the participation of children in matters of concern to them.
"NHRIs should devise specially tailored consultation programmes and imaginative communication strategies to ensure full

compliance with article 12 of the Convention. A range of suitable ways in which children can communicate with the institution should be established." (Committee on the Rights of the Child, General Comment No. 2, 2002, CRC/GC/2002/2, paras. 15 to 17)

The General Comment emphasizes that NHRIs should contribute independently of government to the reporting process under the Convention on the Rights of the Child (paras. 20 to 24; see article 44, page 643). It sets out a non-exhaustive list of proposed activities for these institutions (see box).

Recommended activities for independent human rights institutions for children

article 4

The following is an indicative, but not exhaustive, list of the types of activities which NHRIs should carry out in relation to the implementation of children's rights in light of the general principles of the Convention. They should:

(a) Undertake investigations into any situation of violation of children's rights, on complaint or on their own initiative, within the scope of their mandate;

(b) Conduct inquiries on matters relating to children's rights;

(c) Prepare and publicize opinions, recommendations and reports, either at the request of national authorities or on their own initiative, on any matter relating to the promotion and protection of children's rights;

(d) Keep under review the adequacy and effectiveness of law and practice relating to the protection of children's rights;

(e) Promote harmonization of national legislation, regulations and practices with the Convention on the Rights of the Child, its Optional Protocols and other international human rights instruments relevant to children's rights and promote their effective implementation, including through the provision of advice to public and private bodies in construing and applying the Convention;

(f) Ensure that national economic policy makers take children's rights into account in setting and evaluating national economic and development plans;

(g) Review and report on the Government's implementation and monitoring of the state of children's rights, seeking to ensure that statistics are appropriately disaggregated and other information collected on a regular basis in order to determine what must be done to realize children's rights;

(h) Encourage ratification of or accession to any relevant international human rights instruments;

(i) In accordance with article 3 of the Convention requiring that the best interests of children should be a primary consideration in all actions concerning them, ensure that the impact of laws and policies on children is carefully considered from development to implementation and beyond;

(j) In light of article 12, ensure that the views of children are expressed and heard on matters concerning their human rights and in defining issues relating to their rights;

(k) Advocate for and facilitate meaningful participation by children's rights NGOs, including organizations comprised of children themselves, in the development of domestic legislation and international instruments on issues affecting children;

(l) Promote public understanding and awareness of the importance of children's rights and, for this purpose, work closely with the media and undertake or sponsor research and educational activities in the field;

(m) In accordance with article 42 of the Convention which obligates States Parties to "make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike", sensitize the Government, public agencies and the general public to the provisions of the Convention and monitor ways in which the State is meeting its obligations in this regard;

(n) Assist in the formulation of programmes for the teaching of, research into and integration of children's rights in the curricula of schools and universities and in professional circles;

(o) Undertake human rights education which specifically focuses on children (in addition to promoting general public understanding about the importance of children's rights);

(p) Take legal proceedings to vindicate children's rights in the State or provide legal assistance to children;

(q) Engage in mediation or conciliation processes before taking cases to court, where appropriate;

(r) Provide expertise in children's rights to the courts, in suitable cases as *amicus curiae* or intervenor;

(s) In accordance with article 3 of the Convention which obliges States Parties to "ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision", undertake visits to juvenile homes (and all places where children are detained for reform or punishment) and care institutions to report on the situation and to make recommendations for improvement;

(t) Undertake such other activities as are incidental to the above.

(Extract from Committee on the Rights of the Child General Comment No. 2, "The role of national human rights institutions in the promotion and protection of children's rights", 2002, CRC/GC/2002/2. For full text see www.ohchr.org/english/bodies/crc/comments.htm.)

article 4

International cooperation for implementation

In its comments on general measures of implementation, the Committee has urged many countries to seek and use international cooperation and technical assistance. It has also encouraged donor countries to ensure that their aid programmes follow the lines of the Convention and establish a clear priority for children. Its *Guidelines for Periodic Reports (Revised 2005)* asks for information from donor States on human and financial resources allocated to programmes for children, in particular within bilateral assistance programmes; States receiving international assistance or development aid should provide information on the total resources received and the percentage allocated to programmes for children (CRC/C/58/Rev.1, para. 12).

General Comment No. 5 states:

"Article 4 emphasizes that implementation of the Convention is a cooperative exercise for the States of the world. This article and others in the Convention highlight the need for international cooperation. The Charter of the United Nations (arts. 55 and 56) identifies the overall purposes of international economic and social cooperation, and members pledge themselves under the Charter 'to take joint and separate action in cooperation with the Organization' to achieve these purposes. In the United Nations Millennium Declaration and at other global meetings, including the United Nations General Assembly special session on children, States have pledged themselves, in particular, to international cooperation to eliminate poverty.

"The Committee advises States Parties that the Convention should form the framework for international development assistance related directly or indirectly to children and that programmes of donor States should be rights-based. The Committee urges States to meet internationally agreed targets, including the United Nations target for international development assistance of 0.7 per cent of gross domestic product. This goal was reiterated along with other targets in the Monterrey Consensus, arising from the 2002 International Conference on Financing for Development. The Committee encourages States Parties that receive international aid and assistance to allocate a substantive part of that aid specifically to children. The Committee expects States Parties to be able to identify on a yearly basis the amount and proportion of international support earmarked for the implementation of children's rights.

"The Committee endorses the aims of the 20/20 initiative, to achieve universal access to basic social services of good quality on a sustainable basis, as a shared responsibility of developing and donor States. The Committee notes that international meetings held to review progress have concluded that many States are going to have difficulty meeting

Mobilizing resources – extract from *A World Fit for Children*

"The primary responsibility for the implementation of the Plan of Action and for ensuring an enabling environment for securing the well-being of children, in which the rights of each and every child are promoted and respected, rests with each individual country, recognizing that new and additional resources, both national and international, are required for this purpose.

"Investments in children are extraordinarily productive if they are sustained over the medium to long term. Investing in children and respecting their rights lays the foundation for a just society, a strong economy, and a world free of poverty.

"Implementation of the present Plan of Action will require the allocation of significant additional human, financial, and material resources, nationally and internationally, within the framework of an enabling international environment and enhanced international cooperation, including North-South and South-South cooperation, to contribute to economic and social development.

"Accordingly, we resolve to pursue, among others, the following global targets and actions for mobilizing resources for children:

(a) Express our appreciation to the developed countries that have agreed to and have reached the target of 0.7 per cent of their gross national product (GNP) for overall official development assistance (ODA) and urge the developed countries that have not done so to strive to meet the yet to be attained internationally agreed target of 0.7 per cent of their gross national product for overall ODA as soon as possible. We take upon ourselves not to spare any efforts to reverse the declining trends of ODA and to meet expeditiously the targets of 0.15 per cent to 0.20 per cent of GNP as ODA to least developed countries, as agreed, taking into account the urgency and gravity of the special needs of children;

(b) Without further delay, implement the enhanced heavily indebted poor countries initiative (HIPC) and agree to cancel all bilateral official debts of heavily indebted poor countries as soon as possible, in return for their making demonstrable commitments to poverty eradication, and urge the use of debt service savings to finance poverty eradication programmes, in particular those related to children;

(c) Call for speedy and concerted action to address effectively the debt problems of least developed countries, low-income developing countries and middle-income developing countries in a comprehensive, equitable, development-oriented and durable way through various national and international measures designed to make their debt sustainable in the long term and thereby to improve their capacity to deal with issues relating to children, including, as appropriate, existing orderly mechanisms for debt reduction such as debt swaps for projects aimed at meeting the needs of children;

(d) Increase and improve access of products and services of developing countries to international markets through, *inter alia*, the negotiated reduction of tariff barriers and the elimination of non-tariff barriers, which unjustifiably hinder trade of developing countries, according to the multilateral trading system;

(e) Believing that increased trade is essential for the growth and development of the least developed countries, aim at improving preferential market access for those countries by working towards the objective of duty-free and quota-free market access for all products of the least developed countries in the markets of developed countries;

(f) Mobilize new and substantial additional resources for social development, both at national and international level, to reduce disparities within and among countries, and ensure the effective and efficient use of existing resources. Further, ensure to the greatest possible extent, that social expenditures that benefit children are protected and prioritized during both short-term and long-term economic and financial crises;

(g) Explore new ways of generating public and private financial resources, *inter alia*, through the reduction of excessive military expenditures and the arms trade and investment in arms production and acquisition, including global military expenditures, taking into consideration national security requirements;

(h) Encourage donor and recipient countries, based on mutual agreement and commitment, to fully implement the 20/20 Initiative, in line with the Oslo and Hanoi Consensus documents, to ensure universal access to basic social services."

(Extract from "A World Fit for Children", outcome document of the 2002 United Nations General Assembly's special session on children, Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, paras. 49 to 52)

fundamental economic and social rights unless additional resources are allocated and efficiency in resource allocation is increased. The Committee takes note of and encourages efforts being made to reduce poverty in the most heavily indebted countries through the Poverty Reduction Strategy Paper (PRSP). As the central, country-led strategy for achieving the millennium development goals, PRSPs must include a strong focus on children's rights. The Committee urges Governments, donors and civil society to ensure that children are a prominent priority in the development of PRSPs and sectorwide approaches to development (SWAps). Both PRSPs and SWAps should reflect children's rights principles, with a holistic, child-centred approach recognizing children as holders of rights and the incorporation of development goals and objectives which are relevant to children." *(Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, paras. 60 to 62)*

The Committee encourages States to provide and to use, as appropriate, technical assistance, from among others UNICEF, the Office of the High Commissioner for Human Rights (OHCHR) and other United Nations and United Nations-related agencies. States Parties are encouraged to identify their interest in technical assistance in their reports under the Convention. All United Nations and United Nations-related organizations involved in promoting international cooperation and technical assistance should be guided by the Convention and should mainstream children's rights throughout their activities:

"They should seek to ensure within their influence that international cooperation is targeted at supporting States to fulfil their obligations under the Convention. Similarly the World Bank Group, the International Monetary Fund and World Trade Organization should ensure that their activities related to international cooperation and economic development give primary consideration to the best interests of children and promote full implementation of the Convention." *(Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, paras. 60 to 64)*

The Committee urges States to meet United Nations targets for international assistance. For example:

"The Committee notes the approval of the Programme of Action 2015 for Poverty Reduction and the many other activities in the area of international cooperation and assistance, but remains concerned that the State Party devotes only about 0.27 per cent of its gross national income to the official development assistance, and that the foreseen increase to 0.33 per cent in 2006 is very slow. "In light of its previous recommendations (para. 25), the Committee encourages the State Party to implement the United Nations target of allocating 0.7 per cent of gross domestic product to overseas development assistance as soon as possible..." *(Germany CRC/C/15/Add.226, paras. 21 and 22)*

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Article 4 sets out States Parties' overall obligations to implement all the rights in the Convention.

- ☐ Has there been a comprehensive review to consider what measures are appropriate for implementation of the Convention?
- ☐ Has there been a comprehensive review of all legislation, including any customary, regional or local law in the State, to ensure compatibility with the Convention?

Are the general principles identified by the Committee reflected in legislation:

- ☐ Article 2: all rights to be recognized for each child in jurisdiction without discrimination on any ground?
- ☐ Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children?
- ☐ Article 6: right to life and maximum possible survival and development?
- ☐ Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child?
- ☐ Is it possible to invoke these principles before the courts?
- ☐ Is the Convention incorporated or self-executing in national law?
- ☐ Does the Convention take precedence over domestic law when there is a conflict?
- ☐ Does the Constitution reflect the principles of the Convention, with particular reference to children?
- ☐ Has a consolidated law on the rights of the child been developed?
- ☐ Do children and their representatives have effective remedies for breaches of their rights in the Convention?
- ☐ Is there a comprehensive national strategy for implementation of the Convention?
- ☐ Where there is a National Plan or Programme of Action for children, has implementation of all aspects of the Convention been integrated into it?

Has one (or more) permanent mechanism(s) of government been established

- ☐ to ensure appropriate coordination of policy?
  - ☐ between provinces/regions, etc.?
  - ☐ between central government departments?
  - ☐ between central and local government?
  - ☐ between economic and social policies?
- ☐ to ensure effective evaluation of policy relating to children?
- ☐ to ensure effective monitoring of implementation?

- ☐ Are such mechanisms directly linked to the institutions of government that determine overall policy and budgets in the State?

How to use the checklist, *see page XIX*

- ☐ Is the principle that the best interests of the child should be a primary consideration formally adopted at all levels of policy-making and budgeting?

Is the proportion of the overall budget devoted to social expenditure adequate

- ☐ nationally?
- ☐ regionally/at provincial level?
- ☐ locally?

Is the proportion of social expenditure devoted to children adequate

- ☐ nationally?
- ☐ regionally/at provincial level?
- ☐ locally?

Are permanent arrangements established for budgetary analysis at national and other levels of government to ascertain

- ☐ the proportion of overall budgets devoted to children?
- ☐ any disparities between regions, rural/urban, particular groups of children?
- the effects of structural readjustment, economic reforms and changes on
  - ☐ all children?
  - ☐ the most disadvantaged groups of children?
- ☐ the proportion and amount received/given in relation to international cooperation to promote the rights of the child, and allocated to different sectors?

- ☐ Do the arrangements for monitoring ensure a comprehensive, multidisciplinary assessment of the situation of all children in relation to implementation of the Convention?
- ☐ Is sufficient disaggregated data collected to enable evaluation of the implementation of the non-discrimination principle?
- ☐ Are there arrangements to ensure a child impact analysis during policy formulation and decision-making at all levels of government?
- ☐ Is there a regular report to Parliament on implementation of the Convention?
- ☐ Are parliamentary mechanisms established to ensure appropriate scrutiny and debate of matters relating to implementation?
- ☐ Is civil society involved in the process of implementation at all levels, including in particular
  - ☐ appropriate non-governmental organizations (NGOs)?
  - ☐ children themselves?
- ☐ Is there a permanent mechanism for consulting on matters relating to implementation with appropriate NGOs and with children themselves?

How to use the checklist, *see page XIX*

- ☐ Has an independent human rights institution been established to promote the rights of children – a children's ombudsman, commissioner or focal point within a human rights commission?
  - ☐ Is its independence from government assured?
  - ☐ Does it have appropriate legislative powers, e.g. of investigation?
  - ☐ Does it comply with the Paris Principles on the status of national human rights institutions?

Reminder: **The Convention is indivisible and its articles are interdependent. Article 4 requires States Parties to take all appropriate legislative, administrative and other measures to implement the rights in the Convention. Thus it relates to all other articles.**

Parental guidance and the child's evolving capacities

Text of Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 5, together with article 18 in particular, provides a framework for the relationship between the child, his or her parents and family, and the State. The article provides the Convention on the Rights of the Child with a flexible definition of "family" and introduces to the Convention two vital concepts: parental "responsibilities" and the "evolving capacities" of the child. The article also signals clearly that the Convention regards the child as the active subject of rights, emphasizing the exercise "by the child" of his or her rights. The Committee has expanded on its interpretation of the article in General Comments.

In no sense is the Convention "anti-family", nor does it pit children against their parents. On the contrary, the Preamble upholds the family as "the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children". Several articles emphasize the primary responsibility of parents and place strict limits on state intervention and any separation of children from their parents (articles 3(2), 7, 9, 10, 18, 27); one of the aims for education is the development of respect for the child's parents (article 29)." ■

Summary

States Parties "... shall respect the responsibilities, rights and duties..."

Article 5 introduces to the Convention the concept of parents' and others' "responsibilities" for their children, linking them to parental rights and duties, which are needed to fulfil responsibilities. Article 18 expands on the concept of parental responsibilities (see page 231). In it, States Parties are required to "use their best endeavours" to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child: "Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern." Parental responsibilities are also mentioned in article 27(2) (see page 395).

Beyond this, the Convention does not specifically define "parental responsibilities". But as is the case with the definition of the best interests of the child, the content of the whole Convention is relevant. Parents have responsibilities, in the terms of article 5, to appropriately support "the exercise by the child of the rights recognized in the present Convention". The Convention challenges concepts that parents have absolute rights over their children, which the Committee has noted are traditional in many societies but already changing to some degree in most. The rights and the duties that parents have derive from their responsibility to act in the best interests of the child. The implication is that the concept of parental responsibilities should be reflected and defined in the law, using the framework of the Convention.

"... of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, ..."

The broad definition of family in the Convention on the Rights of the Child reflects the wide variety of kinship and community arrangements within which children are brought up around the world. The importance of the family is emphasized in the Preamble to the Convention: "... the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community", and "... the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding".

Article 5 acknowledges the extended family, referring not only to parents and others legally responsible but also to the extended family or community where they are recognized by local custom. In its General Comment No. 7 on "Implementing child rights in early childhood", the Committee comments:

"Under normal circumstances, a young child's parents play a crucial role in the achievement of their rights, along with other members of family, extended family or community, including legal guardians, as appropriate. This is fully recognized within the Convention (especially article 5)... The Committee recognizes that 'family' ... refers to a variety of arrangements that can provide for young children's care, nurturance and development, including the nuclear family, the extended family, and other traditional and modern community-based arrangements, provided these are consistent with children's rights and best interests." *(Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 15)*

The Committee also recognizes that social trends have led to a range of family patterns:

"... The Committee notes that in practice family patterns are variable and changing in many regions, as is the availability of informal networks of support for parents, with an overall trend towards greater diversity in family size, parental roles and arrangements for bringing up children. These trends are especially significant for young children, whose physical, personal and psychological development is best provided for within a small number of consistent, caring relationships. Typically, these relationships are with some combination of mother, father, siblings, grandparents and other members of the extended family, along with professional caregivers specialized in childcare and education. The Committee acknowledges that each of these relationships can make a distinctive contribution to the fulfilment of children's rights under the Convention and that a range of family patterns may be consistent with promoting children's well-being..." *(CRC/C/GC/7, para. 19)*

The International Covenant on Civil and Political Rights upholds, in article 23, the family as "the natural and fundamental group unit of society... entitled to protection by society and the State" and sets out, in article 24, the child's 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". In two General Comments in 1989 and 1990, the Human Rights Committee emphasizes the flexible definition of the family, which "is interpreted broadly to include all persons composing it in the society of the State Party concerned" (Human Rights Committee, General Comment No. 17, 1989, HRI/GEN/1/Rev.8, para. 6, p. 184).

And in General Comment No. 19 of the Human Rights Committee: "The Committee notes that the concept of the family may differ in some respects from State to State, and even from region to region within a State, and that it is therefore not possible to give the concept a standard definition. However, the Committee emphasizes that, when a group of persons is regarded as a family under the legislation and practice of a State, it must be given the protection referred to in article 23. Consequently, States Parties should report on how the concept and the scope of the family is construed or defined in their own society and legal system. Where diverse concepts of the family, 'nuclear' and 'extended', exist within a State, this should be indicated with an explanation of the degree of protection afforded to each. In view of the existence of various forms of family, such as unmarried couples and their children or single parents and their children, States Parties should also indicate whether and to what extent such types of family and their members are recognized and protected by domestic law and practice." (Human Rights Committee, General Comment No. 19, 1990, HRI/GEN/1/Rev.8, para. 2, p. 188)

The Committee on the Rights of the Child has noted increases in numbers of child-headed and grandparent-headed households or families. It has suggested that polygamy should be investigated for any negative impact on children (see article 18, page 232). A General Recommendation of the Committee on the Elimination of Discrimination against Women in 1994 proposes "prohibition of bigamy and polygamy and the protection of the rights of children" (Committee on the Elimination of Discrimination against Women, General Recommendation No. 21, 1994, HRI/GEN/1/Rev.8, para. 39, p. 315).

"... to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention"

Using the concept of "evolving capacities" has avoided the need for the Convention to set arbitrary age limits or definitions of maturity tied to particular issues. This is one of the Convention's key concepts – an acknowledgement that children's development towards independent adulthood must be respected and promoted throughout childhood. It is linked to the requirement of article 12 that the views of children should be given "due weight in accordance with the age and maturity of the child". The concept is repeated in article 14: parents and legal guardians may provide direction to the child, in relation to the child's right to freedom of thought, conscience and religion, in a manner consistent with his or her evolving capacities.

The wording emphasizes the child as the subject of the rights recognized in the Convention, referring to the exercise "by the child" of these rights. The role of parents in relation to the capacities and rights of babies and younger children is explained in the Committee's General Comment No. 7 on "Implementing child rights in early childhood":

"The responsibility vested in parents and other primary caregivers is linked to the requirement that they act in children's best interests. Article 5 states that parents' role is to offer appropriate direction and guidance in 'the exercise by the child of the rights in the ... Convention'. This applies equally to younger as to older children. Babies and infants are entirely dependent on others, but they are not passive recipients of care, direction and guidance. They are active social agents, who seek protection, nurturance and understanding from parents or other caregivers, which they require for their survival, growth and well-being. Newborn babies are able to recognize their parents (or other caregivers) very soon after birth, and they engage actively in non-verbal communication. Under normal circumstances, young children form strong mutual attachments with their parents or primary caregivers. These relationships offer children physical and emotional security, as well as consistent care and attention. Through these relationships children construct a personal identity and acquire culturally valued skills, knowledge and behaviours. In these ways, parents (and other caregivers) are normally the major conduit through which young children are able to realize their rights." (Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 16)

In the General Comment, the Committee refers to the concept of "evolving capacities" as an "enabling principle":

"Article 5 draws on the concept of 'evolving capacities' to refer to processes of maturation and learning whereby children progressively acquire knowledge, competencies and understanding, including acquiring understanding about their rights and about

how they can best be realized. Respecting young children's evolving capacities is crucial for the realization of their rights and especially significant during early childhood, because of the rapid transformations in children's physical, cognitive, social and emotional functioning, from earliest infancy to the beginnings of schooling. Article 5 contains the principle that parents (and others) have the responsibility to continually adjust the levels of support and guidance they offer to a child. These adjustments take account of a child's interests and wishes as well as the child's capacities for autonomous decision-making and comprehension of his or her best interests. While a young child generally requires more guidance than an older child, it is important to take account of individual variations in the capacities of children of the same age and of their ways of reacting to situations. Evolving capacities should be seen as a positive and enabling process, not an excuse for authoritarian practices that restrict children's autonomy and self-expression and which have traditionally been justified by pointing to children's relative immaturity and their need for socialization. Parents (and others) should be encouraged to offer 'direction and guidance' in a child-centred way, through dialogue and example, in ways that enhance young children's capacities to exercise their rights, including their right to participation (art. 12) and their right to freedom of thought, conscience and religion (art. 14)." *(Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7Rev.1, para. 17)*

The Committee also addresses the concept of evolving capacities and the issue of appropriate guidance in the exercise of rights by older children in its General Comment No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child":

"The Convention on the Rights of the Child defines a child as 'every human being below the age of 18 years unless, under the law applicable, majority is attained earlier' (art. 1). Consequently, adolescents up to 18 years old are holders of all the rights enshrined in the Convention; they are entitled to special protection measures and, according to their evolving capacities, they can progressively exercise their rights (art. 5)…

"The Committee believes that parents or other persons legally responsible for the child need to fulfil with care their right and responsibility to provide direction and guidance to their adolescent children in the exercise by the latter of their rights. They have an obligation to take into account the adolescents' views, in accordance with their age and maturity, and to provide a safe and supportive environment in which the adolescent can develop. Adolescents need to be recognized by the members of their family environment as active rights holders who have the capacity to become full and responsible citizens, given the proper guidance and direction." *(Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, paras. 1 and 7)*

When it ratified the Convention on the Rights of the Child, the Holy See made a reservation "... That it interprets the articles of the Convention in a way which safeguards the primary and inalienable rights of parents, in particular in so far as these rights concern education (arts. 13 and 28), religion (art. 14), association with others (art. 15) and privacy (art. 16)" (CRC/C/2/Rev.8, p. 23).

In its Concluding Observations, the Committee expressed concern about the reservation,

"... in particular with respect to the full recognition of the child as a subject of rights".

The Committee went on to recommend

"... that the position of the Holy See with regard to the relationship between articles 5 and 12 of the Convention be clarified. In this respect, it wishes to recall its view that the rights and prerogatives of the parents may not undermine the rights of the child as recognized by the Convention, especially the right of the child to express his or her own views and that his or her views be given due weight." *(Holy See CRC/C/15/Add.46, paras. 7 and 13)*

Some other reservations and declarations have underlined parental authority. For example, the Republic of Kiribati stated that it "considers that a child's rights as defined in the Convention, in particular the rights defined in articles 12 to 16, shall be exercised with respect for parental authority, in accordance with the I-Kiribati customs and traditions regarding the place of the child within and outside the family". Similarly, a declaration from Poland stated that such rights "shall be exercised with respect for parental authority, in accordance with Polish customs and traditions regarding the place of the child within and outside the family" (CRC/C/2/Rev.8, pp. 27 and 35).

The Committee has frequently expressed concern where countries do not appear to have fully accepted the concept of the child as an active subject of rights, relating this to article 5 and also to articles 12 to 16.

The Committee has consistently stressed this concept during its examination of States Parties' reports. And it has strongly emphasized that upholding the rights of the child within the family is not exercised at the expense of others' rights, in particular those of parents, but, on the contrary, strengthens the rights of the entire family. Thus, a Committee member said during

discussions with Burkina Faso: "... it was important, in striving to implement the Convention's provisions, to promote the true spirit of that instrument to the effect that it was not a question of seeking 'child power' but of showing that upholding the rights of the child strengthened the rights of the entire family, and that, with regard to parenthood, the emphasis should not be on authority but on responsibility." Another member agreed that "it was wrong to interpret the assertion of children's rights as in conflict with those of parents; the rights of the child and of the family went hand in hand" (Burkina Faso CRC/C/SR.136, paras. 51 and 53).

On the same subject, the *Manual on Human Rights Reporting,* 1997, states: "With the Convention, children's rights are given autonomy – not with the intention of affirming them in opposition to the rights of adults or as an alternative to the rights of parents, but in order to bring into the scene a new dimension: the consideration of the perspective of the child within the framework of the essential value of the family. The child is therefore recognized in his or her fundamental dignity and individuality, with the right to be different and diverge in his or her assessment of reality." (*Manual*, p. 445)

The Committee sees the family as crucial to the realization of the child's civil rights. In the outline for its Day of General Discussion on "The role of the family in the promotion of the rights of the child", it stated:

"The civil rights of the child begin within the family... The family is an essential agent for creating awareness and preservation of human rights, and respect for human values, cultural identity and heritage, and other civilizations. There is a need to consider appropriate ways of ensuring balance between parental authority and the realization of the rights of the child, including the right to freedom of expression." *(Committee on the Rights of the Child, Report on the fifth session, January 1994, CRC/C/24, Annex V, p. 63)*

At the end of the General Discussion, the Committee reached some preliminary conclusions:

"Traditionally, the child has been seen as a dependent, invisible and passive family member. Only recently has he or she become 'seen' and, furthermore, the movement is growing to give him or her the space to be heard and respected. Dialogue, negotiation, participation have come to the forefront of common action for children.
"The family becomes in turn the ideal framework for the first stage of the democratic experience for each and all of its individual members, including children. Is this only a dream or should it also be envisaged as a precise and challenging task?"

The Committee affirmed that the Convention is

"... the most appropriate framework in which to consider, and to ensure respect for, the fundamental rights of all family members, in their individuality. Children's rights will gain autonomy, but they will be especially meaningful in the context of the rights of parents and other members of the family to be recognized, to be respected, to be promoted. And this will be the only way to promote the status of, and respect for, the family itself."
(Committee on the Rights of the Child, Report on the seventh session, September/October 1994, CRC/C/34, paras. 183 et seq.*)*

Article 5 makes clear that the nature of parental direction and guidance is not unlimited; it must be "appropriate", be consistent with the "evolving capacities of the child" and with the remainder of the Convention. Article 18 emphasizes that the child's best interests will be the parents' "basic concern". Several States Parties made reservations upholding parental authority (see above, page 78); and others, in their Initial Reports, have referred to the "traditional" authority of parents.

In its Initial Report, the United Kingdom suggests that article 19 of the Convention has to be read in conjunction with article 5 and that "appropriate direction and guidance" of the child "include the administration, by the parent, of reasonable and moderate physical chastisement to a child" (United Kingdom CRC/C/11/Add.1, para. 335). In discussion with United Kingdom Government representatives, a Committee member stated: "... there was no place for corporal punishment within the margin of discretion accorded in article 5 to parents in the exercise of their responsibilities. Other countries had found it helpful to incorporate a provision to that effect in their civil law..." (United Kingdom CRC/C/SR.205, para. 72)

Similarly, a Committee member noted during discussion of Senegal's Initial Report: "The Committee recognized the existence of traditional attitudes and practices, but firmly believed that those that went against the interests of the child should be abolished. The belief that to spare the rod was to spoil the child was one such attitude: it was preferable to provide guidance than to inflict corporal punishment." (Senegal CRC/C/SR.248, para. 73)

Thus, when reading article 5 in conjunction with article 19, the Committee is clear that parental "guidance" must not take the form of violent or humiliating discipline, as the child must be protected from "all forms of physical or mental

violence" while in the care of parents and others. The Committee reiterates this in its General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28(2) and 37, *inter alia*)" (see also article 19, page 262):

"Article 5 requires States to respect the responsibilities, rights and duties of parents 'to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention'. Here again, interpretation of 'appropriate' direction and guidance must be consistent with the whole Convention and leaves no room for justification of violent or other cruel or degrading forms of discipline."
(Committee on the Rights of the Child, General Comment No. 8, 2006, CRC/C/GC/8, para. 28)

The focus of article 5 on "evolving capacities" is not only about children's growing autonomy in relation to parents. It also relates to the child's process of development (articles 6, 27 and 29) and parents' responsibility not to demand or expect from the child anything that is inappropriate to the child's developmental state. Article 5 is about the child's path to maturity, which must come from increasing exercise of autonomy. In many countries, children acquire certain rights of self-determination well before the age of majority; they often gain full adult rights on marriage, which in some States is permitted at the age of 14 or 15 (the Committee strongly criticizes this, see article 1, page 8). In a few countries the concept of "evolving capacities" is reflected by a general provision in legislation that once children acquire sufficient maturity or understanding, they may make decisions for themselves when there is no specific limitation on doing so set down in the law.

The Committee has underlined that there must be no discrimination – for example on grounds of gender – in recognition of maturity in States' legislation (see article 1, page 8).

Preparation for parenthood

As indicated above, the Committee has noted that the traditional view of the child as a "dependent, invisible and passive" member of the family persists in some States. The Committee has highlighted the need to prepare parents for their responsibilities. In its General Comment No. 7 on "Implementing child rights in early childhood", the Committee expands on the need for comprehensive policies and programmes to support parents (see in particular CRC/C/GC/7/Rev.1, paras. 20 to 24, and for further discussion, see article 18, page 231).

The Committee's decision to issue this General Comment reflects a growing recognition of the importance of early child development within the family for the prevention of violence and other forms of crime, both in childhood and later life. This recognition provides further motivation for developing comprehensive support and education programmes for parenting and preparation for parenthood. For example, the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) proposes: "Measures should be taken and programmes developed to provide families with the opportunity to learn about parental roles and obligations as regards child development and child care, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community-based activities" (para. 16).

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 5, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 5 will be particularly relevant to **departments concerned with family law and family support**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 5 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 5, likely to include **training of all those working with and for families, and education for parenting**)?

• Specific issues in implementing article 5

- ☐ Does the definition of "family" for the purposes of the realization of the rights of the child correspond with the flexible definition of the Convention?
- ☐ Is there a detailed legal definition of parental responsibilities, duties and rights?
- ☐ Has such a definition been reviewed to ensure compatibility with the principles and provisions of the Convention?
- ☐ Does legislation ensure that direction and guidance provided by parents to their children is in conformity with the principles and provisions of the Convention?
- ☐ Are the evolving capacities of the child appropriately respected in the Constitution and in legislation?
- ☐ Is there a general principle that once a child has acquired "sufficient understanding" in relation to a particular decision on an important matter, he or she is entitled to make the decision for him/herself?

How to use the checklist, *see page XIX*

- ☐ Are information campaigns/education programmes on child development, the evolving capacities of children, etc. available to parents, other caregivers and children, and to those who support them?
- ☐ Have these campaigns/programmes been evaluated?

Reminder: **The Convention is indivisible and its articles interdependent. Article 5 should not be considered in isolation. Its flexible definition of the family is relevant to interpretation of other articles. The article asserts the child as an active subject of rights with evolving capacities, relevant to implementation of all other rights, including in particular the child's civil and political rights.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is related to that of article 5 include:

Article 1: definition of the child in legislation and practice must take account of the child's "evolving capacities"
Article 18: parental responsibilities and state support for parenting

Child's right to life and maximum survival and development

Text of Article 6

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 6 is one of the articles designated by the Committee on the Rights of the Child as a general principle, guaranteeing the child the fundamental right to life, upheld as a universal human rights principle in other instruments, and to survival and development to the maximum extent possible.

The concept of "survival and development" to the maximum extent possible is crucial to the implementation of the whole Convention. The Committee on the Rights of the Child sees development as an holistic concept, and many articles of the Convention specifically refer to the goal of development. Other articles emphasize the key role of parents and the family for child development and the State's obligation to support them. Protection from violence and exploitation is also vital to maximum survival and development. As with the other articles identified as including general principles (articles 2, 3, and 12), the Committee on the Rights of the Child has proposed that article 6 should be reflected in domestic legislation. ■

Summary

The inherent right to life of the child

The right to life is upheld as a universal human rights principle in article 3 of the Universal Declaration of Human Rights: "Everyone has the right to life, liberty and security of person". Article 6 of the International Covenant on Civil and Political Rights upholds the same principle: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life" (paragraph 1). The other paragraphs of the article in the Covenant place limitations on the use of the death penalty in those countries that have not abolished it (see below, page 88). The Human Rights Committee, in a General Comment in 1982 on the right to life notes that the right has too often been narrowly interpreted: "The expression 'inherent right to life' cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States Parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics." (Human Rights Committee, General Comment No. 6, 1982, HRI/GEN/1/Rev.8, para. 5, p. 167)

According to the *Manual on Human Rights Reporting*, 1997, measures taken by States to implement article 6 of the Convention on the Rights of the Child may be "of a positive nature and thus designed to protect life, including by increasing life expectancy, diminishing infant and child mortality, combating diseases and rehabilitating health, providing adequate nutritious foods and clean drinking water. And they may further aim at preventing deprivation of life, namely by prohibiting and preventing death penalty, extra-legal, arbitrary or summary executions or any situation of enforced disappearance. States Parties should therefore refrain from any action that may intentionally take life away, as well as take steps to safeguard life." (*Manual*, p. 424)

Article 24 of the Convention on the Rights of the Child expands on the child's right to health and health services, and specifically requires "appropriate measures ... to diminish infant and child mortality" (article 24(2)(a), see page 355). The Committee has commended States for reducing mortality rates and has expressed concern whenever rates have risen and at situations in which rates vary in a discriminatory way (for further discussion, see article 24, page 356).

In its General Comment No. 7 on "Implementing child rights in early childhood", the Committee highlights these issues:

"Article 6 refers to the child's inherent right to life and States Parties' obligation to ensure, to the maximum extent possible, the survival and development of the child. States Parties are urged to take all possible measures to improve perinatal care for mothers and babies, reduce infant and child mortality, and create conditions that promote the well-being of all young children during this critical phase of their lives. Malnutrition and preventable diseases continue to be major obstacles to realizing rights in early childhood. Ensuring survival and physical health are priorities, but States Parties are reminded that article 6 encompasses all aspects of development, and that a young child's health and psychosocial well-being are in many respects interdependent. Both may be put at risk by adverse living conditions, neglect, insensitive or abusive treatment and restricted opportunities for realizing human potential. Young children growing up in especially difficult circumstances require particular attention... The Committee reminds States Parties (and others concerned) that the right to survival and development can only be implemented in a holistic manner, through the enforcement of all the other provisions of the Convention, including rights to health, adequate nutrition, social security, an adequate standard of living, a healthy and safe environment, education and play (arts. 24, 27, 28, 29 and 31), as well as through respect for the responsibilities of parents and the provision of assistance and quality services (arts. 5 and 18). From an early age, children should themselves be included in activities promoting good nutrition and a healthy and disease-preventing lifestyle." (Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 10)

The particular threat to children's right to life and development posed by HIV/AIDS is addressed in the Committee's General Comment on "HIV/AIDS and the rights of the child":

"Children have the right not to have their lives arbitrarily taken, as well as to benefit from economic and social policies that will allow them to survive into adulthood and develop in the broadest sense of the word. State obligation to realize the right to life, survival and development also highlights the need to give careful attention to sexuality as well as to the behaviours and lifestyles of children, even if they do not conform with what society determines to be acceptable under prevailing cultural norms for a particular age group. In this regard, the female child is often subject to harmful traditional practices, such as early and/or forced marriage, which violate her rights and make her more vulnerable to HIV infection, including because such practices often interrupt access to education

and information. Effective prevention programmes are only those that acknowledge the realities of the lives of adolescents, while addressing sexuality by ensuring equal access to appropriate information, life skills, and to preventive measures." (Committee on the Rights of the Child, General Comment No. 3, 2003, CRC/GC/2003/3, para. 11)

The child's right to life: abortion and euthanasia

As noted under article 1 (page 2), the Preamble to the Convention on the Rights of the Child recalls the provision in the United Nations Declaration of the Rights of the Child 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." The Working Group drafting the Convention agreed that a statement should be placed in the *travaux préparatoires* to the effect that "In adopting this preambular paragraph, the Working Group does not intend to prejudice the interpretation of article 1 or any other provision of the Convention by States Parties" (E/CN.4/1989/48, pp. 8 to 15; Detrick, p. 110).

Article 1 deliberately leaves open the starting point of childhood, that is, whether it is conception, birth or sometime in between. Thus, the Convention leaves individual States to decide for themselves the conflicting rights and interests involved in issues such as abortion and family planning, and the Committee on the Rights of the Child has therefore suggested that reservations to preserve state laws on abortion are unnecessary (for details of reservations and discussion, see article 1, page 2).

The Committee has commented adversely on high rates of abortion, on the use of abortion as a method of family planning and on selective abortions by gender, and it has encouraged measures to reduce the incidence of abortion.

The Committee has also expressed concern at "clandestine" abortions and the negative effects of teenage pregnancies, including on the right to life of young mothers, and at infanticide; see below, page 87.

It has questioned, from the perspective of children's best interests, the illegality of abortions even in cases of rape or incest:

"... The Committee notes that abortion is illegal except on medical grounds and expresses concern regarding the best interests of child victims of rape and/or incest in this regard...
"The Committee recommends that the State Party review its legislation concerning abortion, with a view to guaranteeing the best interests of child victims of rape and incest...." (Palau CRC/C/15/Add.149, paras. 46 and 47)

The Committee on the Elimination of Discrimination against Women, in a General Recommendation on women and health, states "... When possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion." (Committee on the Elimination of Discrimination against Women, General Recommendation No. 24, 1999, HRI/GEN/1/Rev.8, para. 31(c), p. 336)

Contentious ethical issues arise in relation to the right to life, which the Committee has not as yet tackled comprehensively – for example the responsibility to sustain children with severe disabilities at birth and to sustain the life of very premature babies.

When it examined the Netherlands' Second Report, it commented:

"The Committee notes the information that euthanasia remains a crime under article 293 of the Penal Code, but which is not prosecuted if committed by a medical doctor who meets the criteria explicitly set out in article 293 (2) of the Penal Code and follows the procedures required by law and regulations. As this legislation is also applicable to children aged 12 years or older, requiring explicit and repeated requests from the child, and parental consent if the child is younger than 16 years, the Committee is concerned about the monitoring of such requests because controls are exercised after the request has been fulfilled and because some cases are not reported by doctors. The Committee is concerned about information that medical personnel have terminated the life of newborn infants with severe abnormalities.
"With respect to the Human Rights Committee's recommendations in this regard (CCPR/CO/72/NET, para. 5), the Committee recommends that the State Party:
(a) Frequently evaluate, and if necessary revise, the regulations and procedures in the Netherlands with respect to the termination of life on request in order to ensure that children, including newborn infants with severe abnormalities, enjoy special protection and that the regulations and procedures are in conformity with article 6 of the Convention;
(b) Take all necessary measures to strengthen control of the practice of euthanasia and prevent non-reporting, and to ensure that the mental and psychological status of the child and parents or guardians requesting termination of life are taken into consideration when determining whether to grant the request;
(c) Provide in its next periodic report additional information on the implementation of laws and regulations on the termination of life on request." (Netherlands and Aruba CRC/C/15/Add.227, paras. 33 and 34)

The Human Rights Committee, in its Concluding Observations referred to by the Committee on the Rights of the Child, commented: "The Committee discussed the issue of euthanasia and assisted suicide. The Committee acknowledges that the new Act concerning review procedures on the termination of life on request and assisted suicide, which will come into force on 1 January 2002, is the result of extensive public debate addressing a very complex legal and ethical issue. It further recognizes that the new law seeks to provide legal certainty and clarity in a situation which has evolved from case law and medical practice over a number of years. The Committee is well aware that the new Act does not as such decriminalize euthanasia and assisted suicide. However, where a State Party seeks to relax legal protection with respect to an act deliberately intended to put an end to human life, the Committee believes that the Covenant obliges it to apply the most rigorous scrutiny to determine whether the State Party's obligations to ensure the right to life are being complied with (articles 2 and 6 of the Covenant).

"The new Act contains, however, a number of conditions under which the physician is not punishable when he or she terminates the life of a person, *inter alia,* at the "voluntary and well-considered request" of the patient in a situation of "unbearable suffering" offering "no prospect of improvement" and "no other reasonable solution". The Committee is concerned lest such a system may fail to detect and prevent situations where undue pressure could lead to these criteria being circumvented. The Committee is also concerned that, with the passage of time, such a practice may lead to routinization and insensitivity to the strict application of the requirements in a way not anticipated. The Committee learnt with unease that under the present legal system more than 2,000 cases of euthanasia and assisted suicide (or a combination of both) were reported to the review committee in the year 2000 and that the review committee came to a negative assessment only in three cases. The large numbers involved raise doubts whether the present system is only being used in extreme cases in which all the substantive conditions are scrupulously maintained.

"The Committee is seriously concerned that the new law is also applicable to minors who have reached the age of 12 years. The Committee notes that the law provides for the consent of parents or guardians of juveniles up to 16 years of age, while for those between 16 and 18 the parents' or guardian's consent may be replaced by the will of the minor, provided that the minor can appropriately assess his or her interests in the matter. The Committee considers it difficult to reconcile a reasoned decision to terminate life with the evolving and maturing capacities of minors. In view of the irreversibility of euthanasia and assisted suicide, the Committee wishes to underline its conviction that minors are in particular need of protection.

"The Committee, having taken full note of the monitoring task of the review committee, is also concerned about the fact that it exercises only an *ex post* control, not being able to prevent the termination of life when the statutory conditions are not fulfilled.

"The State Party should re-examine its law on euthanasia and assisted suicide in the light of these observations. It must ensure that the procedures employed offer adequate safeguards against abuse or misuse, including undue influence by third parties. The *ex ante* control mechanism should be strengthened. The application of the law to minors highlights the serious nature of these concerns. The next report should provide detailed information as to what criteria are applied to determine the existence of a 'voluntary and well-considered request', 'unbearable suffering' and 'no other reasonable alternative'. It should further include precise information on the number of cases to which the new Act has been applied and on the relevant reports of the review committee. The State Party is asked to keep the law and its application under strict monitoring and continuing observation.

"The Committee is gravely concerned at reports that new-born handicapped infants have had their lives ended by medical personnel.

"The State Party should scrupulously investigate any such allegations of violations of the right to life (article 6 of the Covenant), which fall outside the law on euthanasia. The State Party should further inform the Committee on the number of such cases and on the results of court proceedings arising out of them." (Netherlands, Human Rights Committee Concluding Observations on Third Periodic Report under the International Covenant on Civil and Political Rights, CCPR/CO/72/NET, paras. 5 and 6)

Article 10 of the new Convention on the Rights of Persons with Disabilities, adopted in December 2006, on "the right to life", requires: "States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others." The Standard Rules on the Equalization of Opportunities for Persons with Disabilities requires that "States should ensure that persons

with disabilities, particularly infants and children, are provided with the same level of medical care within the same system as other members of society" (rule 2.3). The Rules emphasizes that States have an obligation "to enable persons with disabilities to exercise their rights, including their human, civil and political rights, on an equal basis with other citizens", and to eliminate "any discriminatory provisions against persons with disabilities" (rule 15.1 and 15.2).

Relevant to the principle of non-discrimination and the right to life, some States have introduced laws on abortion that permit termination of pregnancy at a later stage, sometimes up to full term when tests have indicated that the foetus has a disabling impairment.

As medical technology advances, these issues may become more complex and pose a greater number of ethical dilemmas and possible conflicts between the rights of the child and of his or her mother.

In its General Comment No. 9 on "The rights of children with disabilities", the Committee asserts that the inherent right to life, survival and development is a right that warrants particular attention where children with disabilities are concerned:

"In many countries of the world children with disabilities are subject to a variety of practices that completely or partially compromise this right. In addition to being more vulnerable to infanticide, some cultures view a child with any form of disability as a bad omen that may 'tarnish the family pedigree' and, accordingly, a certain designated individual from the community systematically kills children with disabilities. These crimes often go unpunished or perpetrators receive reduced sentences. States Parties are urged to undertake all the necessary measures required to put an end to these practices, including raising public awareness, setting up appropriate legislation and enforcing laws that ensure appropriate punishment to all those who directly or indirectly violate the right to life, survival and development of children with disabilities." *(Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, para. 31. See also article 23, page 329.)*

Infanticide

In societies in which boys are valued economically and socially above girls, unequal population figures by gender indicate that selective abortion and/or infanticide may still be widespread. The Platform for Action adopted at the Fourth World Conference on Women states: "... in many countries available indicators show that the girl child is discriminated against from the earliest stages of life, through her childhood and into adulthood. In some areas of the world, men outnumber women by five in every 100." Among the stated reasons for the discrepancy is preference for a son which results in prenatal sex selection and female infanticide. The Platform for Action proposes elimination of "all forms of discrimination against the girl child and the root causes of son preference, which result in harmful and unethical practices such as prenatal sex selection and female infanticide; this is often compounded by the increasing use of technologies to determine foetal sex, resulting in abortion of female foetuses... Enact and enforce legislation protecting girls from all forms of violence, including female infanticide and prenatal sex selection..." (Fourth World Conference on Women, Beijing, China, September 1995, Platform for Action, A/CONF.177/20/Rev.1, paras. 259, 277(c) and 283(d)).

The Committee raised the issue during examination of India's Initial Report and recommended

"... that the State Party undertake studies to determine the socio-cultural factors which lead to practices such as female infanticide and selective abortions, and to develop strategies to address them..." *(India CRC/C/15/Add.115, para. 49)*

It returned to this issue when it examined India's Second Report:

"The Committee notes the 2003 amendment to the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, but remains deeply concerned that the sex ratio in the age group 0-6 years has worsened over the past decade.
"In addition to its recommendations regarding gender discrimination (para. 30), the Committee strongly recommends that the State Party:
(a) Take all necessary steps to ensure the implementation of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994;
(b) Further develop massive awareness campaigns, involving parents, communities, law enforcement officers, etc., and take the necessary measures, including imposing sanctions to end the practice of selective abortions and female infanticide; and
(c) Undertake gender impact studies when planning programmes relating to economic and social policies." *(India CRC/C/15/Add.228, paras. 33 and 34)*

In its discussions with representatives of China following examination of the Initial Report, a member of the Committee noted: "China had passed important legislation to address the problem of gender discrimination, but the distorted gender ratio was alarming, and had to be seen against a background of late abortions, the abandonment of

infants and possible infanticide...” (China CRC/C/SR.299, para. 18)

The Committee followed up the issue in its Concluding Observations:

“While noting the measures taken to confront the problems of discrimination on the grounds of gender and disability, the Committee remains concerned at the persistence of practices leading to cases of selective infanticide...
“It is the Committee’s view that family planning policy must be designed to avoid any threat to the life of children, particularly girls. The Committee recommends in this regard that clear guidance be given to the population and the personnel involved in the family-planning policy to ensure that the aims it promotes are in accordance with principles and provisions of the Convention, including those of its article 24. The State Party is urged to take further action for the maintenance of strong and comprehensive measures to combat the abandonment and infanticide of girls as well as the trafficking, sale and kidnapping or abduction of girls.” (China CRC/C/15/Add.56, paras. 15 and 36)

And following examination of China’s Second Report, the Committee noted with satisfaction

“... the legal measures enacted to prohibit selective abortions and infanticide in mainland China. Nevertheless it remains concerned that selective abortions and infanticide as well as the abandonment of children, in particular girls and children with disabilities, continue as negative consequences of existing family planning policies and societal attitudes.
“The Committee urges the State Party to continue and strengthen its efforts to guarantee the right to life, survival and development of all children in its territory. It recommends that the State Party strengthen its implementation of existing laws against selective abortions and infanticide and take all necessary measures to eliminate any negative consequences arising from family planning policies, including abandonment and non-registration of children and unbalanced sex ratios at birth.” (China CRC/C/CHN/CO/2, paras. 28 and 29)

Many legal systems recognize the particular crime of infanticide as a distinctly defined form of homicide with reduced penalties. The ostensible intention is to provide a special defence for mothers suffering psychological trauma as a result of the process of birth. But by denoting a special, and lesser, crime, such laws appear to discriminate against children as victims of homicide.

The Committee told the Islamic Republic of Iran:

“The Committee reiterates its serious concern at article 220 of the Penal Code, which provides that fathers who kill their child, or their son’s child, are only required to pay one third of the blood money to the mother, and are subjected to a discretionary punishment, in the event that the mother makes a formal complaint.
“The Committee recommends that the State Party take the necessary measures, including the amendment of the offending article of the Penal Code, to ensure that there is no discriminatory treatment for such crimes and that prompt and thorough investigations and prosecutions are carried out.” (Islamic Republic of Iran CR/C/15/Add.254, paras. 31 and 32)

In addition to girls, children with disabilities are particularly at risk of infanticide in some countries, as noted by the Committee in recommendations adopted following its Day of General Discussion on “The rights of children with disabilities” in 1997 (see article 23, page 329). It told Togo:

“The Committee is deeply concerned about reports of killing, in certain areas, of children born with disabilities, malformations, skin discoloration, as well as of children born with teeth, or from mothers who died during delivery.
“While taking note of the discussions that took place with the authors of these killings, the Committee urges the State Party urgently to take all necessary measures to prevent the occurrence of such killings, to prosecute those responsible for such crimes and to raise awareness among the population at large of the need to eradicate such practices.” (Togo CRC/C/15/Add.255, paras. 30 and 31)

Early marriage

An early age of marriage – in particular for girls – not only raises an issue of discrimination under article 2 but also threatens the rights of both the child-mother and the new child to life and to maximum survival and development under article 6 (for discussion see article 1, page 8 and article 2, page 22).

The Platform for Action of the Fourth World Conference on Women, held in Beijing in 1995, indicates that: “More than 15 million girls aged 15 to 19 give birth each year. Motherhood at a very young age entails complications during pregnancy and delivery and a risk of maternal death that is much greater than average. The children of young mothers have higher levels of morbidity and mortality...” (Platform for Action, A/CONF.177/20/Rev.1, para. 268)

The death penalty

Article 37(a) of the Convention on the Rights of the Child prohibits capital punishment “for offences committed by persons below eighteen years of age”. The Convention’s article 6 also

asserts this by recognizing every child's right to life and survival.

Article 6 of the International Covenant on Civil and Political Rights says: "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women" (para. 5). A Second Optional Protocol to the Covenant, adopted by the United Nations General Assembly in 1989, aims at the abolition of the death penalty. Under its article 1, no one within the jurisdiction of a State Party to the Protocol may be executed.

The Committee on the Rights of the Child has raised the issue with a number of States Parties and emphasized that it is not enough that the death penalty is not applied to children. Its prohibition regarding children must be confirmed in legislation (see article 37, page 554 for Committee's comments and further discussion).

The Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions has reported regularly on restrictions on the use of the death penalty, including its prohibition for juvenile offenders (see article 37, page 554).

Armed conflict

Article 38 of the Convention on the Rights of the Child (see page 573) requires special measures of care and protection for children affected by armed conflict. Armed conflict poses a threat to the right to life of many children and the Committee has frequently referred to this threat:

"The Committee is deeply concerned at the extensive violations of the right to life of children by, inter alia*, armed conflict, deliberate killings by armed persons including members of the armed forces, state regroupment policies, other forms of population displacement, poor health and sanitation facilities, severe malnutrition and related illnesses, and as a result of the prevailing conflict between groups of the population.*

"The Committee strongly urges the State Party to make every effort to reinforce protection of the right to life, survival and development of all children within the State Party through policies, programmes and services that target and guarantee protection of this right. The Committee further urges the State Party to seek as much international assistance as possible in this regard." (Burundi CRC/C/15/Add.133, paras. 30 and 31)

"In the light of article 6 and other related provisions of the Convention, the Committee is deeply concerned at the threat posed by the armed conflict to children's lives, including instances of extrajudicial killing, disappearance and torture committed by the police and paramilitary groups; at the multiple instances of 'social cleansing' of street children; and at the persistent impunity of the perpetrators of such crimes.

"The Committee reiterates its recommendation [see CRC/C/15/Add.31] that the State Party continue taking effective measures to protect children from the negative effects of the armed conflict. The Committee urges the State Party to protect children against 'social cleansing' and to ensure that judicial action be taken against the perpetrators of such crimes." (Colombia CRC/C/15/Add.137, paras. 34 and 35)

The Committee returned to the issue again when it examined Colombia's Third Report:

"The Committee is concerned over numerous instances of violence by the regular military forces whereby children have been killed, including cases where children have been falsely reported as killed in combat by the army. Finally, the Committee notes with concern the unbroken pattern of impunity and the continuous tendency to refer serious violation of human rights to the military justice system.

"The Committee urges the State Party to break the legacy of impunity and urgently conduct criminal investigations of human rights violations in cases whereby children have lost their lives and ensure that the perpetrators are brought to justice as a matter of the highest priority. Furthermore, the Committee requests that the State Party respect its international legal obligations in relation to fair trials and ensure that all investigations are carried out independently and impartially." (Colombia CRC/C/COL/CO/3, paras. 44 and 45)

In the same context the Committee has expressed concern at recruitment to armed forces:

"In the light of the provisions and principles of the Convention, especially the principles of the best interests of the child (art. 3) and the right to life, survival and development (art. 6), the Committee is deeply concerned at the early legal minimum age of voluntary enlistment into the armed forces. It recommends that the State Party raise the legal minimum age of voluntary enlistment into the armed forces in the light of international human rights and humanitarian law." (Iraq CRC/C/15/Add.94, para. 15)

Also, the Committee has raised the threat to children's survival and development caused by landmines. For example, it advised Mozambique to

"... continue efforts to clear landmines and ensure the provision of physical rehabilitation and other relevant support to victims." (Mozambique CRC/C/15/Add.172, paras. 30 and 31)

The Human Rights Committee, in a General Comment in 1982, notes that "The right to life enunciated in article 6 of the Covenant ... is the supreme right from which no derogation is permitted even in times of emergency." The General Comment goes on to emphasize that averting the danger of war and strengthening international peace and security "would constitute the most important condition and guarantee for the safeguarding of the right to life". (Human Rights Committee, General Comment No. 6, 1982, HRI/GEN/1/Rev.8, para. 2, p. 166)

And in another General Comment in 1984 it emphasizes that "the designing, testing, manufacture, possession and deployment of nuclear weapons are among the greatest threats to the right to life which confront mankind today ... The production, testing, possession, deployment and use of nuclear weapons should be prohibited and recognized as crimes against humanity. The Committee accordingly, in the interest of mankind, calls upon all States, whether parties to the Covenant or not, to take urgent steps, unilaterally and by agreement, to rid the world of this menace." (Human Rights Committee, General Comment No. 14, 1984, HRI/GEN/1/Rev.8, paras. 4 to 7, p. 178)

Other life-threatening violence to children

The obligation under article 6 of the Convention on the Rights of the Child to preserve the life of children and to promote survival and maximum development is expanded upon in many other articles (among them: article 19, protection from all forms of violence; article 37, protection from torture and cruel, inhuman or degrading treatment or punishment; article 38, protection of children affected by armed conflict and the Optional Protocol on the involvement of children in armed conflict).

The Committee on the Rights of the Child has asserted the right to life, as well as other provisions, when expressing concern at violence to children by security forces, police and others. For example:

"... the Committee is deeply alarmed that the necessary safeguards against the excessive use of force by law enforcement officials or anyone else acting in this capacity are undermined by the provisions of section 73 of the Criminal Code. This may give rise to the violation of children's rights, including their right to life, and leads to impunity for the perpetrators of such violations. Therefore, it is the view of the Committee that the above-mentioned provisions of the Nigerian Criminal Code are incompatible with the principles and provisions of the Convention." *(Nigeria CRC/C/15/Add.61, para. 24)*

"While the Committee notes that the right to life, survival and development is integrated into domestic legislation, it remains extremely concerned at the number of children murdered, as reported by the Special Rapporteur on extrajudicial, summary or arbitrary executions in Brazil in her 2004 report, which stated that the perpetrators of those crimes are mainly military policemen or former policemen (E/CN.4/2004/7/Add.3). "The Committee urges the State Party to take, as a matter of the highest priority, all necessary measures to prevent the killing of children, to fully investigate each of those serious violations of children's rights, to bring the perpetrators to justice and to provide the family of the victims with adequate support and compensation." *(Brazil CRC/C/15/Add.241, paras. 34 and 35)*

Examining the United Kingdom's Second Report, the Committee expressed concern at the use of plastic baton rounds (bullets) for crowd control,

"... as it causes injuries to children and may jeopardize their lives. "Following the recommendations of the Committee against Torture (A/54/44, para. 77(d)), the Committee urges the State Party to abolish the use of plastic baton rounds as a means of riot control." *(United Kingdom CRC/C/15/Add.188, paras. 27 and 28)*

The particular vulnerability of unaccompanied and separated children is raised by the Committee in its 2005 General Comment:

"The obligation of the State Party under article 6 includes protection from violence and exploitation, to the maximum extent possible, which would jeopardize a child's right to life, survival and development. Separated and unaccompanied children are vulnerable to various risks that affect their life, survival and development such as trafficking for purposes of sexual or other exploitation or involvement in criminal activities which could result in harm to the child, or in extreme cases, in death. Accordingly, article 6 necessitates vigilance by States Parties in this regard, particularly when organized crime may be involved..." *(Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, paras. 23 and 24)*

"Disappearance" of children has caused concern in a number of countries. In 2006, the General Assembly adopted the International Convention for the Protection of All Persons from Enforced Disappearance, which includes specific provisions on children who are subject to enforced disappearance, or whose parents or guardians are (see also articles 8 and 37).

The right to life of children who live and/or work on the streets may be particularly threatened:

"The Committee is concerned at the very high number of street children in the State Party, which according to official estimates were more than 10,000 in Bogotá in 2001, due to socio-economic factors, the internal armed conflict as well as abuse and violence in the family. The Committee is concerned over the vulnerability of these children to youth gangs but is particularly disturbed by threats posed by social cleansing.
"The Committee recommends that the State Party:
(a) take effective measures to prevent social cleansing and other violence directed at street children;
(b) carry out a comprehensive study to assess the scope, nature and causes of the presence of street children and youth gangs (pandillas) in the country in order to develop a policy for prevention;
(c) provide street children with recovery and social reintegration services, taking into account their views in accordance with article 12, in particular by proactive outreach activities of the ICBF, taking due account of gender aspects, and provide them with adequate nutrition, housing, necessary healthcare and educational opportunities;
(d) develop a policy for family reunification where possible and in the best interest of the child;
(e) seek technical assistance from, inter alia, *UNICEF."* *(Colombia CRC/C/COL/CO/3, paras. 84 and 85)*

"Honour" killings. In its General Comment No. 4 on "Adolescent health and development in the context of the Convention on the rights of the child", the Committee states:

"In light of articles 3, 6, 12, 19 and 24 (3) of the Convention, States Parties should take all effective measures to eliminate all acts and activities which threaten the right to life of adolescents, including honour killings. The Committee strongly urges States Parties to develop and implement awareness-raising campaigns, education programmes and legislation aimed at changing prevailing attitudes, and address gender roles and stereotypes that contribute to harmful traditional practices. Further, States Parties should facilitate the establishment of multidisciplinary information and advice centres regarding the harmful aspects of some traditional practices, including early marriage and female genital mutilation." *(Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, para. 24)*

It has raised the issue with individual States. For example:

"The Committee takes note of the recognition given to the problem of honour killings by the State Party, but is nonetheless very concerned at the widespread and increasing problem of so-called honour killings, affecting children both directly and, through their mothers, indirectly. The Committee is seriously concerned that, despite the efforts of the State Party, the police are often reluctant to arrest the perpetrators and that the latter receive lenient or token punishment.
"The Committee recommends that the State Party take all necessary measures to ensure that there is no discriminatory treatment for crimes of honour and that they are promptly, fairly and thoroughly investigated and prosecuted. In addition, the Committee recommends that the State Party undertake a thorough review of the existing legislation and strengthen awareness-raising campaigns in this regard." *(Pakistan CRC/C/15/Add.217, paras. 34 and 35)*

"Noting the statement by the delegation that the problem of crimes committed in the name of honour do not exist in the State Party, the Committee is nevertheless concerned that the provisions relating to 'honour crimes' remain in the Penal Code. It is deeply concerned at the statement by the delegation that in some cases such crimes are not punished at all.
"The Committee recommends that the State Party:
(a) Rapidly review its legislation with a view to eliminating all provisions allowing sentences to be reduced if the crime in question is committed in the name of honour;
(b) Amend the law in accordance with international standards and ensure prompt and thorough investigations and prosecutions; and
(c) Undertake awareness-raising activities to make such practices socially and morally unacceptable." *(Lebanon CRC/C15/Add.169, paras. 28 and 29)*

It returned to the issue when it examined Lebanon's Third Report:

"The Committee expresses its deep concern at 'the crimes committed in the name of honour' affecting children both directly and, through their mothers, indirectly. It notes with particular concern that, according to article 562 of the Penal Code, a man who kills his wife or other female relative may receive a reduced sentence if he demonstrates that he committed the crime in response to a socially unacceptable sexual relationship conducted by the victim. According to the information provided by the State Party, some of these crimes have been committed by children.
"In the light of article 6 of the Convention, the Committee strongly recommends that the State Party review as a matter of priority its domestic legislation, particularly article 562 of the Penal Code, with a view to addressing 'honour crimes' in an effective way and to

eliminating all provisions allowing reductions of sentence if the crime is committed in the name of 'honour'. It recommends that the State Party provide special training and resources to law-enforcement personnel with a view to investigating and prosecuting such cases in an effective way. Furthermore, the State Party should raise awareness of this socially and morally unacceptable practice, involving also religious and community leaders." *(Lebanon CRC/C/LBN/CO/3, paras. 32 and 33)*

Other harmful traditional practices. The Convention requires States Parties to take action to abolish traditional practices prejudicial to health of children (see article 24, page 371). Traditional practices can also threaten the right to life and maximum survival and development under article 6. For example, the Committee raised "child sacrifice" with Uganda:

"The Committee notes with deep concern that child sacrifice takes place in the districts of Mukono and Kayunga, a serious violation of the most fundamental rights of the child.
"The Committee recommends that the State Party:
(a) Adopt appropriate legislative measures specifically prohibiting the practice of child sacrifice at the local level;
(b) Continue to ensure that people who sacrifice children are reported to the authorities and prosecuted; and
(c) Conduct awareness-raising campaigns through local Governments on negative cultural practices, especially in the districts concerned." *(Uganda CRC/C/UGA/CO/2, paras. 33 and 34)*

It also expressed concern to the Central African Republic concerning the right to life of children born in the breech position:

"The Committee recommends that the State Party review the impact of traditional attitudes which may be harmful for children, such as attitudes with regard to children born in the breech position, and that the right to life be guaranteed..." *(Central African Republic CRC/C/15/Add.138, para. 33)*

Suicide. In its examination of reports by States Parties, the Committee has been concerned to find high, and in some cases increasing, rates of suicide among children in some countries.

In several cases, the Committee has proposed studies on the causes and on the effective methods of prevention. For example:

"The Committee suggests that the State Party continue to give priority to studying the possible causes of youth suicide and the characteristics of those who appear to be most at risk and take steps as soon as practicable to put in place additional support and intervention programmes, be it in the field of mental health, education, employment or another field, which could reduce this tragic phenomenon. In this regard, the State Party may want to call on Governments and experts in other countries which also may have experience in dealing with this problem." *(New Zealand CRC/C/15/Add.71, para. 28)*

When it examined New Zealand's Second Report, the Committee recommended that the State Party should

"... take all necessary measures to address youth suicide, especially among Maori youth, inter alia *by strengthening the Youth Suicide Prevention Programme..."* *(New Zealand CRC/C/15/Add.216, para. 38)*

The *Guidelines for Periodic Reports (Revised 2005)* specifically asks for disaggregated data on deaths of children caused by suicide (see Appendix 3, page 702).

Traffic accidents. Another common cause of preventable death, affecting children in particular, is traffic accidents:

"The Committee is concerned at the high incidence of traffic accidents which claim the lives of children.
"The Committee recommends to the State Party to strengthen and continue efforts to raise awareness about and undertake public information campaigns in relation to accident prevention." *(Jordan CRC/C/15/Add.125, paras. 37 and 38)*

"The Committee is concerned that ninety per cent of cases of people being run down by cars involve children, as indicated in the State Party's report;
"The Committee recommends that the State Party: ... Develop and implement a policy for the prevention of accidents involving children, including through information campaigns targeting children, drivers, traffic police, teachers and parents." *(Mozambique CRC/C/15/Add.172, paras. 30 and 31)*

Investigation and registration of death

In its original *Guidelines for Periodic Reports*, the Committee acknowledges the importance of adequate investigation of and reporting on the deaths of all children and the causes of death, as well as the registration of deaths and their causes. Establishing an obligation and a procedure in legislation for investigating all child deaths reduces the possibility of a cover-up of the real causes. In addition, it is acknowledged that because of religious and social attitudes, suicide tends to be underreported in many States. In States that have set up systematic procedures for investigating all child deaths, the experience tends to reveal many

more deaths in which some form of violence or neglect is implicated. Adequate investigation also informs preventive strategies. The Committee has urged States to establish statutory child death inquiries. (For example, see United Kingdom, CRC/C/15/Add.188, para. 40.)

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty emphasizes the importance of an independent inquiry into the cause of death of any juvenile in detention. In some States, there has been disturbing evidence of violence to and between inmates, as well as high suicide rates. The Rules requires that "Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention." (Rule 57)

Article 9(4) of the Convention gives both parents and child the right to be informed of the death of either, if this has resulted from "any action initiated by the State Party", unless the provision of information would be detrimental to the well-being of the child (see article 9, page 131).

"... ensure to the maximum extent possible the survival and development of the child"

In its second paragraph, article 6 of the Convention on the Rights of the Child goes beyond the fundamental right to life to promote survival and development "to the maximum extent possible". The concept of "development" is not just about the preparation of the child for adulthood. It is about providing optimal conditions for childhood, for the child's life now.

The Committee on the Rights of the Child has emphasized that it sees child development as an holistic concept, embracing the whole Convention. Many of the obligations of the Convention, including in particular those related to health, adequate standard of living, education, and leisure and play (articles 24, 27, 28, 29 and 31) are relevant to ensuring the maximum development of the child, and individual articles expand on the concept of "development". For instance, under article 27, States Parties recognize "the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development". Among the aims of education set out in article 29 is "... The development of the child's personality, talents and mental and physical abilities to their fullest potential..." and preparation of the child for "responsible life in a free society."

The Convention's provisions protecting the child from violence and exploitation (in particular articles 19 and 32 to 39) are as vital to maximum survival and development as are those on the provision of services. Research now testifies to the potentially serious short- and long-term effects on development of all forms of violence, including sexual abuse and exploitation.

The Convention's Preamble upholds the family as the "natural environment for the growth and well-being of all its members and particularly children" and recognizes that the child, "for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding". Article 5 requires respect for the "evolving capacities of the child" – a key concept of overall development. Article 18 recognizes that parents or legal guardians have the "primary responsibility" for the upbringing and development of the child and requires the State to provide appropriate assistance and under article 20, special protection for those deprived of a family environment. Article 25 requires periodic review of all children placed for care, protection or treatment – an important safeguard for their maximum development. And in relation to children with disabilities, article 23 requires assistance to be provided "in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development".

The Committee expects implementation of all other articles to be carried out with a view to achieving the maximum survival and development of the child – a concept clearly integral to the best interests of the child.

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 6, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 6 is relevant to **all departments affecting children directly or indirectly**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole).

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 6 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 6 likely to include **all those working with or for children and their families, and education for parenting**)?

• Specific issues in implementing article 6

- ☐ Is the general principle reflected in article 6 included in the State's legislation?
- ☐ Have appropriate measures been introduced to reduce rates of infant and child mortality for all sectors of the population?
- ☐ Have the rates of infant and child mortality consistently decreased over recent years, including disaggregated rates?
- ☐ Is the rate of abortion recorded and reported, including by age?
- ☐ Where abortion is permitted, is its use appropriately regulated?
- ☐ Where abortion is permitted, has the State ensured there is no discriminatory variation in the term at which it is permitted, (e.g., dependent on identification of disability)?

Is the State satisfied that there is no infanticide, in particular of

- ☐ girls?
- ☐ children with disabilities?

How to use the checklist, *see page XIX*

- ☐ Is the rate of child pregnancies recorded and reported?
- ☐ Have appropriate measures been undertaken to reduce the number of child pregnancies?
- ☐ Has the State ensured there are no circumstances in which the death penalty may be applied to children?
- ☐ Are there appropriate arrangements to ensure the registration of, investigation of and reporting on the deaths of all children and their causes?
- ☐ Are homicide rates analysed by the age of the victim in order to identify the proportion of children of different age groups who are murdered?
- ☐ If the crime of infanticide exists in the legislation of the State has it been reviewed in the light of the Convention's principles?
- ☐ Are suicides by children recorded and reported and the rates analyzed by age?
- ☐ Have appropriate measures been taken to reduce and prevent suicide by children?
- ☐ Have appropriate measures been taken to reduce and prevent accidents to children, including traffic accidents?

Reminder: **The Convention is indivisible and its articles interdependent. Article 6 – the child's right to life and to maximum survival and development – has been identified by the Committee as a general principle of relevance to implementation of the whole Convention.**

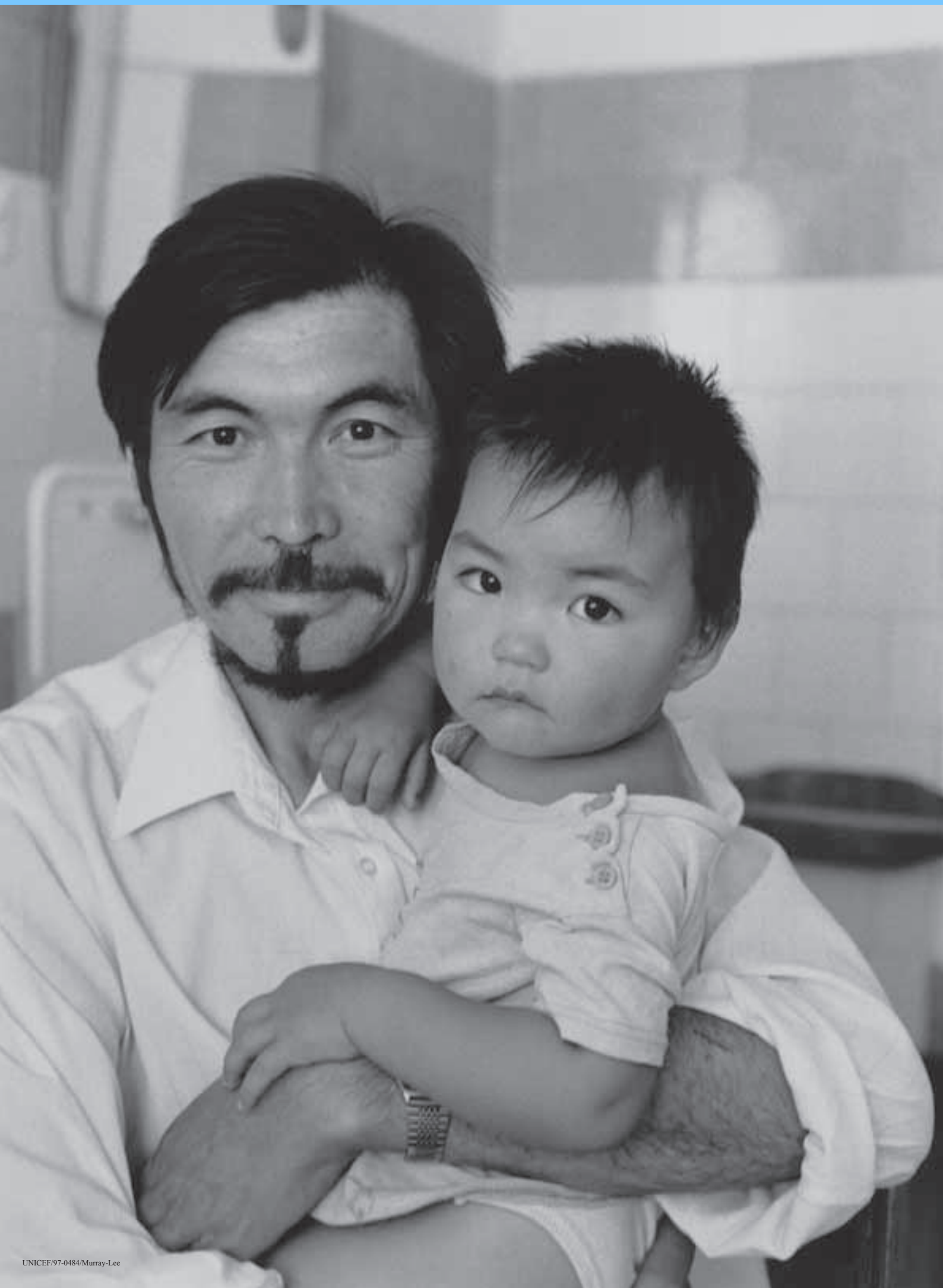
Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is related to that of article 6 include:

Article 37(a): prohibition of capital punishment
Articles particularly related to the child's right to maximum development include articles 18, 24, 27, 28, 29 and 31



UNICEF/97-0484/Murray-Lee

Birth registration, name, nationality and right to know and be cared for by parents

Text of Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Summary

Article 7 provides for the birth registration of children and for children's rights to a name, a nationality and to know and be cared for by their parents.

The article reflects the text of article 24(2) and (3) of the International Covenant on Civil and Political Rights: "24(2) Every child shall be registered immediately after birth and shall have a name. (3) Every child has the right to acquire a nationality." The Human Rights Committee General Comment on article 24 of the Covenant notes: "In the Committee's opinion, this provision should be interpreted as being closely linked to the provision concerning the right to special measures of protection and it is designed to promote recognition of the child's legal personality." (Human Rights Committee, General Comment No. 17, 1989, HRI/GEN/1/Rev.8, para. 7, p. 185)

Article 7 of the Convention on the Rights of the Child also contains a "new" right – the right of the child to know and be cared for by his or her parents. The right is qualified by the words "as far as possible". It may not be possible to identify parents, and even when they are known, it may not be in the child's best interests to be cared for by them.

Article 7 should be read in conjunction with article 8 (preservation of identity, including nationality, name and family relations), article 9 (separation from parents), article 10 (family reunification) and article 20 (continuity in upbringing of children deprived of their family environment). ■

The child's right to be "registered immediately after birth"

The importance of universal registration

The registration of all children is important for a number of reasons identified by the Committee, which has consistently expressed concern about countries that fail to secure universal registration.

Registration is the State's first official acknowledgement of the child's existence; it represents recognition of each child's individual importance to the State and of the child's status under the law. Where children are not registered, they are likely to be less visible, and sometimes less valued. Children who are not registered often belong to groups who suffer from other forms of discrimination. For example:

"The Committee is concerned about the continuing difficulties encountered in ensuring birth registration, particularly of children born out of wedlock…" (Sri Lanka CRC/C/15/Add.40, para. 14)

"While noting the high level of birth registration, the Committee is concerned at the information that some groups of children, in particular children abandoned at maternity wards, children whose parents cannot afford the registration (related) fee, refugee children and children of internally displaced persons still do have difficulties with proper birth registration." (Georgia CRC/C/15/Add.222, para. 26)

"… The Committee is … concerned at the information that Roma children are often not registered due to the lack of identification documents for their parents. They are also discriminated against by authorities who refuse to recognize the right of Roma children to registration." (Bosnia and Herzegovina CRC/C/15/Add.260, para. 32)

"The Committee notes with appreciation the significant efforts made by the State Party… However, it continues to be concerned that, in part because of existing family planning policies, all children are not systematically registered immediately after birth in mainland China, and that this disproportionately affects girls, children with disabilities and children born in some rural areas." (China CRC/C/CHN/CO/2, para. 42)

"Despite the State Party's efforts in this area… the Committee is nevertheless concerned about the high number of children that remain without birth registration, particularly in the most remote areas of the country and in tsunami-affected areas. The Committee is also concerned about persisting difficulties in ensuring the registration of migrant workers, refugees and asylum seekers as well as of indigenous and minority communities, particularly those born outside hospitals…" (Thailand CRC/C/THA/CO/2, para. 31)

Birth registration is also an essential element of national planning for children, providing the demographic base on which effective strategies can be built. Without registration, for example, it is unlikely that countries can have an accurate knowledge even of their child mortality rates, a key indicator for child survival strategies (see also the importance of child death registration, article 6, page 92). While the costs of securing universal registration may be high, particularly in countries with dispersed rural populations, the benefits are substantial, not least in relation to efficient use of resources.

As the Committee has commented, registration is necessary:

"… to facilitate the effective monitoring of the situation of children and thus assist in the development of suitably appropriate and targeted programmes." (Nicaragua CRC/C/15/Add.36, para. 16)

"The Committee recommends that special efforts be developed to guarantee an effective system of birth registration, in the light of article 7 of the Convention, to ensure the full enjoyment of their fundamental rights by all children. Such a system would serve as a tool in the collection of statistical data, in the assessment of prevailing difficulties and in the promotion of progress in the implementation of the Convention…" (Ethiopia CRC/C/15/Add.67, para. 29)

These benefits may not be fully understood by the population: the Committee noted, in its examination of Mozambique:

"… There is widespread misunderstanding, for numerous reasons, of the purposes of birth registration…
"The Committee recommends that the State Party… Conduct information campaigns for the general population explaining the importance and purposes of birth registration." (Mozambique CRC/C/15/Add.172, paras. 34 and 35)

Registration may, additionally, be a means of securing children's other rights – such as their identification following war, abandonment or abduction; enabling children to know their parentage (particularly if born out of marriage); providing protection by proving children are below legal age limits (for example for employment, or recruitment to the armed services or in the juvenile justice system), and reducing the danger of

trafficking in babies or of infanticide. At its most extreme, non-registration may threaten the physical survival of the child. For example, at the time of Peru's Initial Report, the Committee expressed concern that:

"... due to the internal violence, several registration centres have been destroyed, adversely affecting the situation of thousands of children who are often left without any identity document, thus running the risk of their being suspected of involvement in terrorist activities." (Peru CRC/C/15/Add.8, para. 8)

Peru has since made "considerable efforts" to remedy this situation, although 15 per cent of Peruvian children are still unregistered (CRC/C/PER/CO/3, para. 33).

And in Yemen

"... the Committee wishes to call the attention of the State Party to the serious implications of the absence of a birth certificate, which can result in the sentencing of a child to the death penalty..." (Yemen CRC/C/15/Add.102, para. 20)

The Human Rights Committee General Comment notes: "The main purpose of the obligation to register children after birth is to reduce the danger of abduction, sale of or traffic in children or of other types of treatment that are incompatible with the enjoyment of the rights provided for in the Covenant. Reports by States Parties should indicate in detail the measures that ensure the immediate registration of children born in their territory." (Human Rights Committee, General Comment No. 17, 1989, HRI/GEN/1/Rev.8, para. 7, p. 185)

More problematically, a number of countries report that production of a birth certificate is necessary for children to secure health care, education and other benefits (see box). While the motive is, at least in part, to increase the rate of birth registration, the Committee has made clear that this practice is misguided: the absence of a birth certificate should not be used to punish children by denying them basic rights. For example, it recommended to Belize:

"... children whose births have not been registered and who are without official documentation should be allowed to access basic services, such as health and education, while waiting to be properly registered." (Belize CRC/C/15/Add.252, para. 33)

When and how children should be registered

In its General Comment No. 7 on "Implementing child rights in early childhood", the Committee discusses how the "major challenge" of securing universal birth registration should be met:

A birth certificate is required for:*

	Immunization	Health care	School enrolment	Marriage
Algeria	No	No	Yes	Yes
Argentina	No	No	Yes	Yes[1]
Bangladesh	No	No	No	No
Brazil	No	No	Yes	Yes
China	No	No	Yes[2]	Yes[2]
Colombia	Yes	Yes	Yes	Yes
Congo, DR.	No	No	Yes	No
Egypt	Yes	No	Yes	No
Ethiopia[3]	–	–	–	–
India	No	No	Yes	No
Indonesia	No	No	Yes	Yes
Iran	No	No	Yes	Yes
Iraq	Yes	No	No	No
Kenya	Yes	No	Yes	No
Mexico	Yes	Yes	Yes	Yes
Morocco	No	No	Yes	Yes
Myanmar	Yes	No	Yes	No
Nepal	No	No	No	No
Nigeria	No	No	Yes	–
Pakistan	No	No	Yes	No
Peru	No	No	Yes	Yes
Philippines	No	No	Yes	Yes
Russian Fed.	Yes	Yes	Yes	No
South Africa	No	Yes	Yes	Yes
Sudan	No	No	Yes	No
Tanzania	No	No	Yes	No
Thailand[4]	Yes	Yes	Yes	Yes
Turkey	No	No	Yes	Yes
Uganda	No	No	Yes	No
Ukraine	Yes	Yes	Yes	No
Uzbekistan	Yes	Yes	Yes	No
Viet Nam	No	No	Yes	No
TOTAL	10	7	28	14

* Among countries with 75 per cent of the world's under-18 population.

[1] A birth certificate is required only when the person is under the legal age of marriage: 16 for girls, 18 for boys.
[2] An identification card is required but a residence card may suffice.
[3] No registration system.
[4] A house registration card is needed for most services and a birth certificate is needed to obtain a house registration card. A child may attend school but cannot receive a graduation certificate without a registration card.

Source: *The Progress of Nations 1998*, UNICEF, p. 9.

"This can be achieved by a universal, well-managed registration system that is accessible to all and free of charge. An effective system must be flexible and responsive to the circumstances of the family, for example by providing mobile registration units where appropriate. The Committee notes that children who are sick or disabled are less likely to be registered in some regions and emphasizes that all children should be registered at birth, without discrimination of any kind (art. 2). The Committee also reminds

States Parties of the importance of facilitating late registration of birth, and of ensuring that children who are not registered have equal access to health care, protection, education and other social services." (Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 25)

For obvious reasons, securing universal registration can be difficult for poorer countries and the Committee has gone out of its way to congratulate States that have achieved high levels of registration, such as Sao Tome and Principe:

"The Committee... commends the State Party for the high scores attained in birth registration following the national campaign for birth registration... The Committee recommends that the State Party continue implementing is comprehensive strategy in order to achieve 100 per cent rate of birth registration as soon as possible..." (Sao Tome and Principe CRC/C/15/Add.235, para. 30)

According to article 7, the child should be registered "immediately after birth" which implies a defined period of days rather than months. However, if for any reason children are not registered or if their records have been lost, then, as the Committee says, the omission should be made good by the State.

Universal registration requires that domestic law makes registration a compulsory duty both of parents and of the relevant administrative authorities. Universal plainly means all children born within the State, irrespective of their nationality. The Committee was therefore critical of the Dominican Republic and Japan:

"... In particular, concern is expressed about the situation of children of Haitian origin or belonging to Haitian migrant families whose right to birth registration has been denied in the State Party. As a result of this policy, those children have not been able to enjoy fully their rights, such as to access to health care and education." (Dominican Republic CRC/C/15/Add.150, para. 26)

"The Committee is concerned... that undocumented migrants are unable to register the birth of their children, and that this has... resulted in cases of statelessness." (Japan CRC/C/15/Add.231, para. 31)

However, the Committee has concluded that the imposition of fines or other sanctions on parents for failing to register their children is likely to be counter-productive. For example, it observed that Albanian parents who fail to meet a 30-day deadline to register their child "encounter additional difficulties" (Albania CRC/C/15/Add.249, para. 34), and to Guinea Bissau:

"... the Committee remains concerned that not all children are registered at birth and that the imposition of a financial fine upon parents who register the birth of their child after the expiry of the official deadline is a hindrance to birth registration." (Guinea Bissau CRC/C/15/Add.177, para. 28)

Birth registration should be free, or at least free to poor parents:

"... The Committee urges the State Party to ... ensure that all children are registered at birth... notably by suppressing any fees and decentralizing the system" (Haiti CRC/C/15/Add.202, para. 33)

and

"... The Committee recommends that the State Party strengthen efforts to enusre that all children born in Armenia are registered... including by... waiving fees for the poor." (Armenia CRC/C/15/Add.225, para. 28)

The *Manual on Human Rights Reporting,* 1997, notes: "Birth registration should be ensured by States Parties to every child under their jurisdiction, including to non-nationals, asylum seekers, refugee and stateless children... In some situations, however, practical difficulties may be encountered in the registration of children. States Parties' reports have shown that this is often the case in relation to children born from nomadic groups, in rural or remote areas where birth registration offices may be lacking and access to them may, in view of their distance, pose additional problems to the children's families. Similar problems may arise in situations of emergency, including armed conflicts. In such circumstances, States have to adopt solutions which, being designed to ensure the implementation of this right, are also appropriate to the specific particularities of such situations. In this regard, the establishment of mobile registration offices has often shown to be an effective option." (*Manual,* p. 430)

A systematic approach is consistently endorsed by the Committee:

"The Committee... recommends that the State Party improve the existing birth registration system by:
(a) Introducing birth registration units and public awareness-raising campaigns to reach the most remote areas of its territory;
(b) Strengthening cooperation between the birth registration authority and maternity clinics, hospitals, midwives and traditional birth attendants, in order to achieve better birth registration coverage in the country;
(c) Continuing to develop and widely disseminate clear guidelines and regulations on birth registration to officials at the national and local levels; and

(d) Ensuring that children whose births have not been registered and who are without official documentation have access to basic services, such as health and education, while waiting to be properly registered." (Thailand CRC/C/THA/CO/2, para. 32)

The Committee encourages "innovative and accessible methods" to secure full registration (Mexico CRC/C/MEX/CO/3, para. 32), for example commending Brunei Darussalam's "flying doctors team" (CRC/C/15/Add.219, para. 33), Netherlands Antilles' initiative of a three-month "grace period" given to undocumented migrants to register themselves (CRC/C/15/Add.186, para. 34) and the creation by Mauritius of "a hotline operating on a 24-hour basis through which tardy declarations can be made" (CRC/C/MUS/CO/2, para. 33). It recommends States to seek technical assistance from agencies such as UNICEF and UNFPA (India CRC/C/15/Add.228, para. 39), use mobile registration units and conduct public information campaigns with a view to:

"... increasing the appreciation of the importance of birth registration and providing information on the procedure of birth registration, including the rights and entitlements derived from the registration, including through television, radio and printed materials..." (Ghana CRC/C/GHA/CO/2, para. 33)

Falsification of birth records is also a matter of concern, as this can expose children to various forms of exploitation. The Committee recommended that Azerbaijan tackle the problem of "false data" and "control the accuracy of birth certificates and ensure the implementation of the applicable law in this respect" (Azerbaijan CRC/C/AZE/CO/2, paras. 31 and 32), and that the Philippines

"... take effective measures against simulation of birth certificates, inter alia*, by assigning a governmental body, such as the Department of Social Welfare and Development, to monitor the implementation of relevant provisions and file all simulation cases."* (Philippines CRC/C/15/Add.259, para. 35)

What details should be registered?

Although the Convention does not specify what must be registered, other rights (to name and nationality, to know parentage, family and identity) imply that registration ought, as a minimum, to include:

- the child's name at birth,
- the child's sex,
- the child's date of birth,
- where the child was born,
- the parents' names and addresses,
- the parents' nationality status.

For example, the Committee raised the need for systematic registration with Sierra Leone:

"The Committee is concerned that the absence of systematic birth registration in the State Party, thereby preventing an accurate statement of the identity or age of a child, can make it very difficult for the protection afforded to children by domestic legislation or by the Convention to be enforced. The Committee is also concerned at the arbitrary manner, in the absence of birth registration records, in which age and identity are frequently established.

"In the light of article 7 of the Convention, the Committee recommends that the State Party establish as quickly as is possible a practice of systematic birth registration for all children born within the national territory. The Committee further urges the State Party to proceed with the registration of those children who have not thus far been registered." (Sierra Leone CRC/C/15/Add.116, paras. 42 and 43)

Other information – for example the parents' occupations, the child's siblings or his or her ethnic status – may also be useful for statistical purposes, although care must be taken that this does not invade privacy or lead to forms of discrimination. For example, the Committee took note that Rwanda had introduced a new birth certificate and identity card "that did not refer to ethnic origin" (Rwanda CRC/C/15/Add.234, para. 32). For this reason Honduras reported to the Committee that the parents' marriage status is not included on certificates, though the names of the baby's grandparents and the baby's size and birth weight are required (Honduras CRC/C/3/Add.17, para. 43; Honduras CRC/C/15/Add.24, para.12; Honduras CRC/C/6/Add.2, paras. 416 and 418).

The registration of the baby's parents may prove problematic. It is hard to find reasons, so far as the child is concerned, why the baby's mother should not be registered, although such an omission is permitted in France, to the expressed concern of the Committee (see below, page 106).

The matter of naming the father is more complicated. The State is likely to have an interest in both parents being registered so that they can subsequently be required to maintain the child. The child, too, has a right under this article to know who his or her parents are. The Committee raised the matter with Ireland:

"The Committee is concerned about the disadvantaged situation of children born of unmarried parents due to the lack of appropriate procedures to name the father in the birth registration of the child...

"The Committee recommends that the State Party take appropriate measures to establish, as far as possible, procedures for the inclusion of

the name of the father on the birth certificates of children born of unmarried parents..." *(Ireland CRC/C15/Add.85, paras. 17 and 36)*

However, given that birth registers tend to be public documents, the child's right to privacy must be protected, for example in a case where the father has an incestuous relationship with the mother. Belgium reported that it allowed registration of the single filiation from the mother in such circumstances (Belgium CRC/C/11/Add.4, para. 124).

The United Nations Statistics Division publishes advice in the *Handbook on Civil Registration and Vital Statistics Systems* on aspects of birth registration such as techniques for reaching target groups, confidentiality and storage of records and legal frameworks, particularly. (See http://millenniumindicators.un.org/unsd/demographic/sources/civilreg/civilreg3.htm.)

The child's right "from birth to a name"

The article specifically provides that the right to a name should be "from birth". The Committee noted that there should be no delay:

"The Committee... is concerned that some children are still not registered at birth and are not given a name until their baptism, which could be three or four months after their birth..." *(Grenada CRC/C/15/Add.121, para. 16)*

States should therefore ensure that abandoned babies and children are always provided with a name; any temptation to use numbers should be resisted – for example in circumstances of mass movement of refugees which include many unaccompanied children.

The Convention does not suggest that children have a right to any particular sort of name. However, a significant number of countries not only make arrangements for children's names to be registered but also prescribe what names are used. For example, article 18 of the American Convention on Human Rights (1969) states: "Every person has the right to a given name and to the surname of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary."

The intention of such a provision appears relatively uncontroversial and protective of certain categories of children – as the Human Rights Committee General Comment observes "providing for the right to have a name is of special importance in the case of children born out of wedlock" (Human Rights Committee, General Comment No. 17, 1989, HRI/GEN/1/Rev.8, para. 7, p. 185). However in some circumstances prescriptive laws on names may conflict with the non-discrimination rights under article 2 or with the right to peacefully enjoy minority cultural practices under article 30, for example in cases where minority groups have different naming traditions that do not involve using parental surnames.

In this regard the Committee raised its concern with Greece that "persons who speak a language other than Greek, including refugees and asylum seekers, have difficulty in registering names for their children in their native language" and recommended

"... That all children are able to registered under, and make use of, their full original name as chosen by themselves, their parents or other legal guardians." *(Greece CRC/C/15/Add.170, paras. 40 and 41)*

Moreover, where countries go further and enforce a blanket law that the child must, or in some cases must not, bear the father's name, this may not be necessarily in the child's best interests. For example, Belgium maintains an extremely complicated set of laws relating to the naming of children born in and out of marriage, including children born of adulterous relationships where the father's name can only be used with the agreement of the woman who was his lawful wife at the time of the conception. Belgium acknowledged the latter rules have been problematic, since they are as much about the "moral interests of the conjugal family" as about the best interests of the child (Belgium CRC/C/11/Add.4, para. 123).

The Committee raised the issue with Uruguay:

"In this regard, the Committee is particularly concerned at the persisting discrimination against children born out of wedlock, including in regard to the enjoyment of their civil rights. It notes that the procedure for the determination of their name paves the way for their stigmatization and the impossibility of having access to their origins..." *(Uruguay CRC/C/15/Add.62, para. 11)*

It would be dangerous to assume that any international or domestic law asserting children's right to their parents' name necessarily represents a provision "more conducive to the realization of the rights of the child" under article 41 of the Convention on the Rights of the Child. Countries should also carefully examine any laws on names for inadvertent breach of articles 2 and 3.

The provisions of article 5 (parental guidance and the child's evolving capacities), article 12 (respect for the child's opinion) and article 19 (protection from harm) should also be considered in relation to naming. The right to a name from birth

is unavoidably a matter for adult caregivers or the State; babies can play no part in choosing their names. However, provision should be made so that children can apply to the appropriate authorities to change their name at a later date. Children's names can also be changed following the remarriage of parents or adoption. In such circumstances, children's rights to identity are also involved and the Committee specifically recommended that New Zealand's adoption law reform ensured "the right of children, as far as possible, to maintain one of their original first names". (New Zealand CRC/C/15/Add.216, para. 34. See also article 8, page 114.)

The Committee took up the question of children's own rights with the Federal Republic of Yugoslavia (Serbia and Montenegro):

"The Committee takes note that the principle of respect for the views of the child has been reflected in such situations as the change of name ..." (Federal Republic of Yugoslavia (Serbia and Montenegro) CRC/C/15/Add.49, para. 31)

Although parents are the persons most likely to decide the child's name, consistency with the Convention should not allow this to be an absolute parental right. Domestic laws should have appropriate mechanisms to prevent registration of a name that might make a child an object of ridicule, bad luck or discrimination, as for example in Malawi's "practice of derogatory names being assigned to some children such as children born out of wedlock", which the Committee recommended the government abolish (Malawi CRC/C/15/Add.174, paras. 31 and 32).

The child's right to "acquire a nationality", with particular reference to the State's "obligations under the relevant international instruments, in particular where the child would otherwise be stateless"

Some States confer a limited form of nationality to certain groups of children, for example to the children of parents who are not themselves citizens. This appears to be a form of discrimination. The "right to acquire a nationality" implies a right to all the benefits derived from nationality.

This point was taken up by the Committee with a number of countries, for example:

"The Committee is very concerned that the granting of citizenship to children born in the State Party is restricted on the basis of colour or racial origin by the provisions contained in article 27 of the Constitution and the Alien and the Nationalization Law, which are contrary to article 2 of the Convention on the Rights of the Child." (Liberia CRC/C/15/Add.236, para. 32)

"The Committee is... deeply concerned that the Citizenship Act establishes three different categories of citizenship, possibly resulting in some categories of children and their parents being discriminated against, stigmatized and/or denied certain rights." (Myanmar CRC/C/15/Add.237, para. 34)

"The Committee... remains concerned about the different types of access to citizenship, which mainly affect children of minority groups, especially Roma children." (Croatia CRC/C/15/Add.243, para. 31)

The issue of children's nationality is particularly difficult, given the sensitivity of all nations about sovereignty and citizenship, differing legal and cultural presumptions on how nationality should be acquired and the ever-increasing anxiety of richer nations to exclude, or to deny citizenship to, poor people from other nations. The drafting of this article and articles 9 (separation from parents) and 10 (family reunification) picks a careful way between these anxieties and the recognition that children should have a right to nationality. Article 7(2) thus provides that "States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."

Nonetheless, a number of reservations or interpretative declarations have been entered to article 7 – by countries such as Liechtenstein, Malaysia, Singapore, Thailand, United Arab Emirates and the United Kingdom. These countries indicate that their Constitutions or domestic laws relating to nationality may define or restrict the scope of article 7. For example, Kuwait stated: "The State of Kuwait understands the concept of article 7 to signify the right of the child who was born in Kuwait and whose parents are unknown (parentless) to be granted Kuwaiti nationality as stipulated by the Kuwaiti Nationality Laws" (CRC/C/2/Rev.8, p. 27), though in fact stateless children may not necessarily be parentless. The Committee expressed concern about Kuwait's nationality laws:

"The Committee is... concerned that in the light of the State Party's legislation regarding citizenship, nationality may only be obtained by a child from his/her Kuwaiti father. The Committee recommends that domestic legislation be amended to guarantee that the acquisition of Kuwaiti nationality be determined in the light of the provisions and principles of the Convention, especially articles 2, 3 and 7." (Kuwait CRC/C/15/Add.96, para. 20)

The wording "right to acquire a nationality" is taken directly from the International Covenant on Civil and Political Rights (article 24(3)). The General Comment by the Human Rights Committee already quoted states: "Special attention should also be paid, in the context of the protection to be granted to the children, to the right of every child to acquire a nationality, as provided for in article 24, paragraph 3. While the purpose of this provision is to prevent a child from being afforded less protection by society and the State because he is stateless, it does not necessarily make it an obligation for States to give their nationality to every child born in their territory. However, States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. In this connection, no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents. The measures adopted to ensure that children have a nationality should always be referred to in reports by States Parties." (Human Rights Committee, General Comment No. 17, 1989, HRI/GEN/1/Rev.8, para. 8, p. 185)

The words in article 7(2): "States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless" refer primarily to the Convention on Reduction of Statelessness (1961), which provides that children should acquire the nationality of the State in which they were born if they are not granted nationality by any other State, or if such children fail to make the proper applications to obtain this right, then they should be entitled to the nationality of one of their parents (subject to certain conditions). Originally it was proposed that the first provision be incorporated into the Convention but difficulties with some national laws made this unacceptable (E/CN.4/L.1542, pp. 6 and 7; Detrick, pp. 125 to 129). Article 7(2) represents a compromise between the two positions and is a clear pointer to the provisions of article 41: "Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in ... (b) International law in force for that State."

The Committee on the Rights of the Child has raised concerns about stateless children:

"The Committee welcomes the amendments made in 1998 to the Law on Citizenship simplifying procedures for the naturalization of children of stateless persons and notes that the number of stateless persons in Estonia is decreasing. Nevertheless, the Committee is concerned that the stateless situation of parents, who by virtue of their status are unable to participate fully in Estonian society, negatively impacts on their children's integration into Estonian society. Moreover, it is concerned that, under article 21 of the Law on Citizenship, children of former military and security service personnel and their spouses and families may be denied citizenship." (Estonia CRC/C/15/Add.196, para. 28)

"... the Committee regrets that children of Syrian-born Kurdish parents who are stateless and have no other nationality at birth continued to be denied Syrian nationality and are subject to discrimination, contrary to articles 2 and 7 of the Convention." (Syrian Arab Republic CRC/C/15/Add.212, para. 33)

"The Committee is concerned that ... there are still disparities in practice, in particular with regard to... the acquisition of Jordanian nationality. In this last respect, the Committee is concerned that in the light of Jordanian legislation, cases of statelessness might arise..." (Jordan CRC/C/15/Add.21, para. 11)

This concern was revived in the Committee's Concluding Observations on Jordan's Second Report:

"... In light of the Committee's previous recommendations ... the Committee remains concerned that restrictions on the right of a Jordanian woman to pass on her nationality to her child, particularly where she is married to a refugee, may result in the child becoming stateless." (Jordan CRC/C/15/Add.125, para. 29)

The Committee consistently recommends that States ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Nationality can be acquired either from parents (*jus sanguinis*) or from place of birth (*jus soli*). Islamic law favours nationality taken from parentage; some countries prohibit dual nationality, so that a choice between nationalities may have to be made for children, and some countries have systems that accommodate both parentage and place of birth, sometimes with discriminatory effects.

Other potentially discriminatory practices are when the child automatically takes the nationality of the father rather than the mother, or vice versa, or when children can only inherit nationality from married fathers. It should be noted that article 9(2) of the Convention on the Elimination

of All Forms of Discrimination against Women states: "States Parties shall grant women equal rights with men with respect to the nationality of their children."

The United Arab Emirates, the United Kingdom and Japan, for example, were among those criticized by the Committee:

"The Committee is concerned that the nationality law does not grant citizenship status to children of a woman citizen of the Emirates married to a non-national, as it does where the father is a national of the Emirates." (United Arab Emirates CRC/C/15/Add.183, para. 30)

"The Committee recommends that the State Party... amend the nationality law to allow transmission of nationality through unmarried as well as married fathers." (United Kingdom CRC/C/15/Add.188, para. 23)

"The Committee is concerned that a child of a Japanese father and foreign mother cannot obtain Japanese citizenship unless the father has recognized the child before its birth, which has, in some cases, resulted in the child being stateless." (Japan CRC/C/15/Add.231, para. 31)

The words "the right to acquire a nationality" can be interpreted as being the right "from birth", (Principle 3 of the Declaration of the Rights of the Child (1959) states simply: "The child shall be entitled from his birth to a name and a nationality"), but in any event must mean that stateless children should have the right to acquire the nationality of the country in which they have lived for a specified period. The latter provision is important given the growing numbers of stateless, often parentless, children who receive adequate protection from the country in which they live throughout their childhood but then discover that they are unlawful residents at the time of their majority.

Decisions about nationality are often made by parents at the time of the child's birth. Older children, however, should be able to apply on their own behalf to change their nationality. Canada was commended for adopting laws to facilitate the acquisition of citizenship by children adopted abroad by Canadian citizens, an essential component of foreign adoptions. (Canada CRC/C/15/Add.215, para. 26)

"as far as possible, the right to know... his or her parents"

Meaning of "parent"

A few decades ago the definition of "parent" was fairly straightforward. There were the "biological" parents, sometimes known as the "natural" or "birth" parents, and there might also be "psychological" or "caring" parents, such as adoptive or foster parents, who acted as the child's primary caregiver throughout his or her infancy.

When article 7 was drafted, it was pointed out that the laws of some countries – for example, the former German Democratic Republic, the United States of America and the former Union of Soviet Socialist Republics – upheld "secret" adoptions whereby adopted children did not have the right to know the identity of their biological parents (E/CN.4/1989/48, pp. 18 to 22; Detrick, p. 127). However, nowadays the term "biological" parent may have a more complex meaning. For example, where egg donation is concerned, the biological parent could be either the genetic parent (the donor of the egg) or the birth mother.

Countries have entered declarations and reservations in relation to this right: "The United Kingdom interprets the references in the Convention to 'parents' to mean only those persons who, as a matter of national law, are treated as parents. This includes cases where the law regards a child as having only one parent, for example where a child has been adopted by one person only and in certain cases where a child is conceived other than as a result of sexual intercourse by the woman who gives birth to it and she is treated as the only parent." (CRC/C/2/Rev.8, p. 42)

"In cases of irrevocable adoptions, which are based on the principle of anonymity of such adoptions, and of artificial fertilization, where the physician charged with the operation is required to ensure that the husband and wife, on the one hand, and the donor, on the other, remain unknown to each other, the non-communication of a natural parent's name or natural parents' names to the child is not in contradiction with this provision." (Czech Republic, CRC/C/2/Rev.8, p. 20)

"The Government of Luxembourg believes that article 7 of the Convention presents no obstacle to the legal process in respect of anonymous births, which is deemed to be in the interest of the child, as provided under article 3 of the Convention." (CRC/C/2/Rev.8, p. 28)

Notwithstanding these reactions, a reasonable assumption is that, as far as the child's right to know his or her parents is concerned, the definition of "parents" includes genetic parents (for medical reasons alone this knowledge is of increasing importance to the child) *and* birth parents, that is the mother who gave birth and the father who claimed paternity through partnership with the mother at the time of birth (or whatever the social definition of father is within the

culture: the point being that such social definitions are important to children in terms of their identity). In addition, a third category, the child's psychological parents – those who cared for the child for significant periods during infancy and childhood – should also logically be included since these persons too are intimately bound up in children's identity and thus their rights under article 8 (see page 114).

Certainly the Committee has expressed dismay at Luxembourg's concept of an 'anonymous' birth:

"The Committee remains concerned about the fact that the children born anonymously ('under x') are denied the right to know, as far as possible, their parents... [and] urges the State Party to take all necessary measures to prevent and eliminate the practice...
"In case anonymous births continue to take place, the State Party should take the necessary measures so that all information about the parent(s) are registered and filed in order to allow the child to know – as far as possible and at the appropriate time – his/her parent(s)." *(Luxembourg CRC/C/15/Add.250, paras. 28 and 29)*

Meaning of "as far as possible"

It is necessary to distinguish between different situations.

First there are children whose parent **cannot** be identified (for example, when the mother does not know who the father is or when the child has been abandoned). States Parties can do little about this, although legislation under article 2 must ensure that such children are not discriminated against.

Second, births occur where the mother **refuses** to identify the father (including extreme circumstances, for example in cases of incest or when the father has raped the mother). While mothers could, arguably, be legally required to name the father, it would be difficult to enforce this and conflict could be raised between the mother's rights and the child's rights. However, in many countries fathers of children born out of marriage often refuse to be identified. While recognizing that this is a social problem, the Committee believes that the State also has a role to play:

"The Committee is concerned that many children born out of wedlock do not know the identity of their father, inter alia, *because of societal pressures that cause mothers to be reluctant to file a paternity action...*
"Noting the supportive role that the Department of Family Services is already playing in this regard, the Committee recommends that the State Party further facilitate and support the activities (including paternity procedures) which will contribute to the full implementation of the rights of children to know their parents." *(Saint Vincent and the Grenadines CRC/C/15/Add.184, paras. 26 and 27)*

"Given the information that some 50 per cent of all households in the State Party are headed by women, the Committee expresses its concern that the establishment of legal paternity, where the biological father does not want to legally recognize the child, is time consuming and expensive...
"... the Committee recommends that the State Party facilitate the establishment of legal paternity for children born out of wedlock by creating accessible and expeditious procedures and by providing mothers with necessary legal and other assistance in this regard." *(Antigua and Barbuda CRC/C/15/Add.247, paras. 33 and 34)*

In some countries even the mother's identity may be concealed at her request, for example in Italy and France:

"The Committee is... concerned that children born out of wedlock legally do not have a mother or a father unless they are recognized by their mothers and/or fathers." *(Italy CRC/C/15/Add.198, para.27)*

"... The Committee remains concerned that... the right to conceal the identity of the mother if she so wishes is not in conformity with the provisions of the Convention." *(France CRC/C/15/Add.240, para. 23)*

Third, there are the situations when the State decides that a parent **should not** be identified. For example:

- where adoption law limits the children's entitlement and access to information to know that they are adopted and who their genetic parents are. The Committee has expressed concern about a number of countries that maintain policies of 'secret' adoptions and always firmly recommends that the children be told about their parentage:

  "The Committee reiterates its concern at the practice of keeping the identity of biological parents of the adoptee secret...
  "... The adoption law should guarantee the right of the child to know his or her origin and to have access to information about the background and vital medical history of both the child and biological parents..." *(Armenia CRC/C/15/Add.225, para. 38)*

  "The Committee notes with concern that the right of an adopted child to know his or her original identity is not protected in the State Party.
  "The Committee encourages the State Party to protect the right of the adopted child to know his or her original identity,

establishing appropriate legal procedures for this purpose, including recommended age and professional support measures." (Russian Federation CRC/C/RUS/CO/3, paras. 40 and 41)

"The Committee urges the State Party... to ensure that adopted children at the appropriate age have the right to access to the identity of their biological parents..." (Uzbekistan CRC/C/UZB/CO/2, paras. 40 and 41)

- where the law requires a falsification of paternity on the birth certificate, for example in relation to a child whose father is not the mother's current husband or, as in the case of Uruguay, where the Committee deplored the fact that as regards children born out of marriage:

  "... when born to a mother or father who is a minor, these children cannot be recognized by that parent." (Uruguay CRC/C/15/Add.62, para. 11)

- with anonymous egg/sperm donation for *in vitro* fertilization, where most countries protect the secrecy of the donor;

- where the State tacitly encourages the abandoning of children, as for example, Austria:

  "The Committee is concerned at the practice of anonymous birth in the State Party (also known as 'baby flaps' or 'baby nests') and notes the information that some data on the parent(s) are collected in an informal manner." (Austria CRC/C/15/Add.251, para. 29)

This last category, of state-approved secrecy, includes the most controversial aspects of the interpretation of "as far as possible", appearing to unnecessarily breach children's right to know their genetic parents.

Some States Parties argue that "secret" adoptions (where the child is not entitled to discover his or her genetic parents) are necessary to secure the success of an adoption. However, many other countries have shown that policies of open adoptions do not adversely affect the outcome for the child.

The United Nations Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children with Special Reference to Foster Placement and Adoption Nationally and Internationally provides that "The need of a foster or an adopted child to know about his or her background should be recognized by persons responsible for the child's care unless this is contrary to the child's best interests" (article 9).

Three points should be noted. First, article 7 does not refer to "the best interests of the child," although this was proposed by some delegates in the drafting sessions (E/CN.4/1989/48, pp. 18 to 22; Detrick, p. 129). The words "as far as possible" appear to provide a much stricter and less subjective qualification than "best interests". The words imply children are entitled to know their parentage if this is possible, even if this is deemed to be against their best interests. But the holistic nature of the Convention suggests that a child who would definitely be harmed by the discovery of his or her parent's identity could be prevented from having this information. This interpretation is supported by the fact that "as far as possible" also covers the child's right to be cared for by his or her parents – and no one could maintain that "as far as possible" in that context does not include consideration of the child's best interests. But it is clear that children's right to know their parentage could only be refused on the grounds of best interests in the most extreme and unambiguous circumstances, and children should be given the opportunity for this decision to be reviewed at a later date.

Second, "best interests" is nowhere defined and there are no easy answers as to whether it is more harmful to children's best interests to give them distressing information about their origins or to refuse them this information on the grounds the information might cause them harm.

Third, the Convention's articles 5 (evolving capacities of the child) and 12 (child's opinion) suggest that the determination of what is or is not in the child's best interests so far as knowledge of origins is concerned may not be made just at one point during the child's life. The best interests of a 6-year-old in relation to this issue may be quite different from the best interests of a 16-year-old. This is not to say that adopted children are obliged to contact or even to be told the details of their genetic parents (although it appears to be the accepted practice in most countries that children should know the circumstances of their birth from as early an age as possible. In the Netherlands, for example, "it is standard practice for the child to be informed about its natural parents. The adoption court checks that this has been done" (Netherlands CRC/C/51/Add.1, para. 76)). Many children choose not to trace their genetic parents, since the significant parents in their lives are likely to be those who have cared for them and raised them. Nonetheless under the terms of article 7, the State should ensure that information about genetic parents is preserved to be made available to children if possible.

A stronger argument, mounted by those countries that maintain secrecy, is not about the rights of the child (or of the adopting couple) but about

protecting the child's mother from extreme forms of social condemnation, such as ostracism, injury or death. In such instances there are competing rights: children's rights to know their origins and mothers' rights to confidentiality and protection. Article 30 of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (1993) (see article 21, page 299) upholds mothers' rights, empowering the State of origin of the child to withhold information about the parents' identity. Those countries that maintain adoption secrecy in order to protect the mother should, nonetheless, have provisions to release information to the child, either with the mother's permission or at a time when she will not suffer harm. The Committee has not accepted arguments in favour of actively falsifying the records of adopted children.

Similar arguments prevail over falsifying parentage in cases of adultery. Some countries require that husbands are the lawfully recognized fathers of any children born within that marriage. In many cases this entails the complicity of the mother and is likely to be rather more to the benefit than to the disadvantage of the child. However, there is a difference between individuals lying and States enforcing a lie. In some circumstances both parents will want the true parentage of a child to be declared and may be prevented by the law from doing so.

Regarding the secrecy of egg and sperm donation, two arguments are commonly made. First, that it is not in the best interests of the child to know of his or her artificial conception. This does not seem convincing, however, particularly now there are medical reasons for knowing genetic parentage. Second, it is argued that unless their anonymity is secured donors will be deterred, fearing future embarrassment or even maintenance suits by their biological children. However, legislation can protect a donor parent from maintenance suits and the experience of some countries suggests that donors are not deterred by the possibility of being identified, though numbers may fall initially. In any event, the law on artificial forms of fertilization, as with adoption, should be framed to protect the rights and well-being of children, not to meet the needs of childless couples.

The Committee has commented:

"Concerning the right of the child to know his or her origins, the Committee notes the possible contradiction between this provision of the Convention with the policy of the State Party in relation to artificial insemination, namely in keeping the identity of sperm donors secret." *(Norway CRC/C/15/Add.23, para. 10)*

And

"The Committee notes that, according to ... the law on Medically Assisted Procreation, a child can be informed of the identity of his/her father only if he/she has a legitimate interest and is concerned at the meaning of 'legitimate interest' in that regard...
"... the Committee recommends that the State Party ensure, as far as possible, respect for the child's right to know his or her parents' identities." *(Switzerland CRC/C/15/Add.182, paras. 28 and 29)*

"... as far as possible, the right to... be cared for by his or her parents"

This right must be read in the context of three other articles – article 5, which acknowledges, alongside the primacy of parents, "the members of the extended family or community as provided for by local custom" (see page 76); article 9, which requires that "a child shall not be separated from his or her parents against their will, except when... such separation is necessary for the best interests of the child" (see page 122) and article 18, which endorses the principle that both parents have joint responsibility for caring for their children, appropriately supported by the State (see page 237). Article 27 (requiring States to assist parents in their material responsibilities in relation to caring for children) is also relevant.

The right to be "cared for" by both parents implies a more active involvement in the child's life by the absent parent than simply paying the other parent or the State money to support the child (see article 27(4), page 401). It should be noted that unlike article 5, which refers to the (albeit limited) rights of parents and others, this article is framed in terms of the child's right, not the parents'. (At one stage the drafting of this article included the proposed formulation "The child shall have the right from his birth to know and belong to his parents", but the words "belong to" were considered inappropriate in a convention on children's rights. [E/CN.4/1989/48, pp. 18 to 22; Detrick, p. 127])

This focus on the child's right must cast doubt on the legitimacy of Luxembourg's official declaration that it would maintain its law which says: "If at the time of conception, the father or mother was bound in marriage to another person, the natural child may be raised in the conjugal home only with the consent of the spouse of his parent." (CRC/C/2/Rev.8, p. 28)

As with children's right to know their parents, the right to be cared for by parents is qualified by the

words "as far as possible". The purpose of this proviso is in one sense self-evident. It may not be possible if the parents are dead or have repudiated the child. It also may not be possible when the state authorities have judged that parental care is not in the child's best interests because the parents are abusive or neglectful (see article 9, page 122). However, the onus is on the State to prove this; the right upholds a general principle running through the Convention – that in ordinary circumstances, children are best off with their parents.

The point at which this right becomes most problematic is perhaps when children themselves decide that they would rather not be cared for by parents, although parents and State do not support this. Among the many thousands of homeless children in all countries are those who fall into this category – children who have, in effect, voted with their feet. States need flexible, child-centred procedures where runaway children are concerned. Any automatic return of such children to parents without investigation of the reasons why they ran away and without provision of alternative measures of care, for example, is in conflict with the provisions and principles of the Convention.

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 7, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 7 is relevant to the **departments of justice, home affairs, social welfare and health**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 7 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 7 likely to include the **training of birth registration officers, social workers, adoption agency staff and medical personnel**)?

• Specific issues in implementing article 7

- ☐ Does domestic law require parents to register children immediately after their birth?
- ☐ Is the duty to register well publicized?
- ☐ Is registration free?
- ☐ Is registration made easy for parents, both in terms of access (for example by providing mobile registration units or using schools) and comprehensibility (for example by use of minority languages or by training registration staff)?
- ☐ Are all children born within the jurisdiction registered, including those born of non-citizens?
- ☐ Where parents fail to register children, is there a duty on the State to secure registration?

Does registration include necessary information for the child to claim his or her rights to:

- ☐ a name?
- ☐ a nationality?
- ☐ knowledge of parentage?

How to use the checklist, *see page XIX*

- ☐ Are arrangements in place to secure the confidentiality of any potentially stigmatizing information on the birth register?

- ☐ Does domestic law provide for the naming of all children from birth?
- ☐ Does this law ensure that no children are discriminated against (for example by laws unrelated to the best interests of children, requiring or prohibiting certain forms of naming)?
- ☐ Are children of appropriate maturity able to apply to change their names?
- ☐ Are the courts empowered to veto a name that is against the best interests of the child (for example one which could render the child an object of fear or ridicule)?

- ☐ Does domestic law ensure that all stateless children living within the jurisdiction have a right to acquire the State's nationality?
- ☐ Has the State ratified The Convention on Reduction of Statelessness (1961)?
- ☐ Has the State ensured that there is no discrimination between forms of nationality?
- ☐ Has the State ensured that there is no discrimination in the acquisition of nationality (for example in relation to children born out of marriage or to rights to acquire the nationality of either parent)?
- ☐ Are children able to apply to change their nationality?

- ☐ Does domestic law and administrative practice ensure that the identities of children's parents (including genetic parents, birth mother and caring parents) are accurately recorded and preserved?
- ☐ Do children have the right to know from the earliest date possible the truth about the particular circumstances of their parenting (for example by adoption or by an artificial form of conception)?
- ☐ Do all children, including adopted children and children conceived by artificial forms of conception, have the right to know, as far as possible, who their genetic parents are?
- ☐ Is refusal of this right limited only to the grounds that refusal of information is necessary to protect the child from a likelihood of harm or is necessary to protect the child's parent from a likelihood of harm?
- ☐ When children are refused the right to know parentage, are they able to reapply at a later date?
- ☐ Does domestic law contain a presumption that children should be cared for by their parents?
  - ☐ Is this law framed as the child's right?

- ☐ Where children do not wish to be cared for by parents, is provision made to investigate the reasons why they do not and to provide alternative measures of care while arrangements for their future are being determined?

How to use the checklist, *see page XIX*

Reminder: **The Convention is indivisible and its articles are interdependent. Article 7 should not be considered in isolation.**

Particular regard should be paid to: The other general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 1 include:

Article 5: parental guidance and child's evolving capacities
Article 8: preservation of child's identity
Article 9: non-separation from parents except when necessary for best interests
Article 10: international family reunification
Article 11: protection from illicit transfer and non-return of children abroad
Article 16: protection from arbitrary interference in privacy, family and home
Article 18: parents having joint responsibility
Article 20: children deprived of their family environment
Article 21: adoption
Article 22: refugee children
Article 30: children of minorities or indigenous peoples
Article 35: prevention of sale, trafficking and abduction

Preservation of identity

Text of Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

Article 8 of the Convention on the Rights of the Child concerns the children's rights to identity and their rights to have such identity preserved or, where necessary, re-established by the State.

The article was introduced in the Working Group drafting the Convention by an Argentinean delegate on the grounds that it was necessary to secure the speedy intervention of the State when the child's right to preserve his or her identity had been violated. Argentina was at the time tackling the disappearance of children and babies, which had occurred under the regime of the Argentinean junta during the 1970s and 1980s. While many such children were killed, a number had been adopted by childless couples; active steps were needed to trace these children and establish their true identity (E/CN.4/1986/39, pp. 8 to 10; Detrick, pp. 292 to 294). The United Nations General Assembly subsequently adopted a Declaration on the Protection of All Persons from Enforced Disappearance in 1992 (resolution 47/133). In 2006 the General Assembly adopted the International Convention for the Protection of All Persons from Enforced Disappearance, which also deals with the preservation of these children's identity.

Although article 8 only describes three aspects of identity – nationality, name and family relations – other articles, such as article 2 (non-discrimination), article 7 (right to a name and nationality and to know and be cared for by parents), article 16 (protection from arbitrary interference in privacy, family and home) and article 30 (right to enjoy culture, religion and language), should protect against other forms of interference in children's identity. Article 20 also provides that children deprived of their family environment should where possible have continuity of upbringing, particularly with regard to their ethnic, cultural and linguistic background. ■

Summary

Child's right "to preserve his or her identity including nationality, name and family relations as recognized by law without unlawful interference"

The three elements of identity particularly specified are nationality, name and family relations (as recognized by law).

Nationality

As discussed in relation to articles 7 and 10, the rights of children to nationality are not strong under the Convention. The link between nationality and their rights to identity is therefore important. A child's "national identity" may derive from the nationality of his or her parents, which suggests that any legislation preventing children from inheriting the nationality of their parents might not be compatible with the Convention – for example those States that prohibit dual nationality or those States that do not recognize the right of children to inherit the nationality of their unmarried father. Equally, the child's "national identity" can be acquired through residence as well as through parentage, which renders questionable those States that do not allow children to acquire full nationality from significant periods of residence. And once a child has acquired citizenship, removal of this may amount to an assault on his or her 'identity':

"The Committee is concerned that in some instances, children can be deprived of their citizenship in situations where one of their parents loses his/her citizenship.
"... The Committee... recommends that no child be deprived of his/her citizenship on any ground, regardless of the status of his/her parent(s)." (Australia CRC/C/15/Add.79, paras. 14 and 30)

Name

Some States prohibit children's names being changed by their parents (for example on divorce and remarriage), although this tends to be more due to respect for fathers' rights than for children's. It should be noted that most adoption law authorizes a change of name (although some States require older children's consent for any name change). This topic is also discussed under article 7 (see page 102).

Family relations

The phrase "family relations as recognized by law" is unclear. It emerged from a less than logical series of amendments in the drafting process. The original version from Argentina was "the child has the inalienable right to retain his true and genuine personal, legal and family identity". Some States protested that "family identity" had no meaning in their legal codes, and they proposed a change to "family identity as recognized by law"; others simultaneously proposed changing "family identity" to "family relations". Both changes were accepted, although, in fact, it seems that "as recognized by law" is inappropriate, because Argentina's original point was that identity includes more than just legal forms of identity (E/CN.4/1986/39, pp. 8 to 10; Detrick, p. 294).

The phrase does however recognize an important principle, which is that a child's identity means more than just knowing who one's parents are (see article 7, page 105). Siblings, grandparents and other relatives can be as, or more, important to the child's sense of identity as his or her parents are. Most domestic legal instruments governing, for example, adoption, fostering or divorce arrangements, fail to recognize this fact – children may be given legal rights to discover who their biological parents are, or to make applications for contact with them, but rarely do those rights extend to cover other members of the child's biological family.

The concept of "children's identity" has tended to focus on the child's immediate family, but it is increasingly recognized that children have a remarkable capacity to embrace multiple relationships. From the secure foundation of an established family environment, children can enjoy complex and subtle relationships with other adults and with a range of cultures, to a much larger degree than may be recognized. Thus children's best interests and senses of identity may be sustained without having to deny them knowledge of their origins, for example after reception into state care, through "secret" adoptions or anonymous egg/sperm donations and so forth (see also article 7, page 105).

Children who live in a different country from that of one or both of their parents may not be able to preserve their identity, as expressed by their family relations. Those countries that maintain long waiting lists for immigrant or emigrant children to be granted permission to join their parents should ensure that such cases are dealt with speedily and with a presumption in favour of the child being allowed to join their parents (see articles 9, 10 and 22).

Additional Protocol I to the Geneva Conventions provides for the preservation of the identity of children who have been displaced or evacuated in time of war. The authorities must provide each child with a card to be sent to the Red Cross Central Tracing Committee. The card should include a photograph and details of the child's name, sex, date and place of birth, name of parents

and next-of-kin, the child's nationality, native language, religion, home and present addresses, any identifying marks and health details, and details of where the child was found.

Name, nationality and family are only some elements of identity. Other aspects of identity include:

- the child's personal history since birth – where he or she lived, who looked after him or her, why crucial decisions were taken, etc.
- the child's race, culture, religion and language. An 'unlawful' interference in this aspect of identity could include
  - the suppression of minority languages in the education system, state information and the media;
  - state persecution or proscription of the practice of a religion;
  - failure to give adopted, fostered or institutionally placed children the opportunity to enjoy their ethnic, cultural, linguistic or religious heritage;
- the child's physical appearance, abilities, gender identity and sexual orientation.

The preservation of some of these aspects of identity is also upheld in article 20, which provides that when children are without families "due regard shall be paid to the desirability of continuity in the child's upbringing and to the child's ethnic, religious, cultural and linguistic background" (see page 288) and article 30, which upholds the right of children of minority and indigenous communities to enjoy and practice their culture, religion and language (see page 455).

"Preserve"

The word implies both the non-interference in identity and the maintenance of records relating to genealogy, birth registration and details relating to early infancy that the child could not be expected to remember. Some of these are beyond the scope of the State, but measures should be taken to enforce detailed record-keeping and preservation of records (or, in the case of abandoned children, preservation of identifying items) where children are refugees, abandoned, fostered, adopted or taken into the care of the State. Equal care must be taken to ensure such records are confidential (see article 16, page 209). In a General Discussion on "States' role in preventing and regulating separation" the Committee recommended:

"... that all children residing in out-of-home care, including the foster families, public and private residential institutions and care providers, religious care institutions, etc. and the children to be placed in such care are provided with adequate social background investigation and written detailed documentation which follows the child through the out-of-home care period. These multidisciplinary files need to be regularly updated and completed during the child's development..." *(Committee on the Rights of the Child, Report on the fortieth session, September 2005, CRC/C/153, para. 680)*

The Committee raised concerns with China about its failure to provide birth certificates for children who were undergoing an international adoption process:

"The Committee is... concerned about the lack of explicit guarantees that children without birth certificates maintain their right to an identity throughout the adoption process... "The Committee recommends that the State Party... enact legislative and administrative measures to ensure that all children without birth certificates are guaranteed their right to an identity throughout the adoption process..." *(China CRC/C/CHN/CO/2, paras. 52 and 53)*

It also raised concerns with the Seychelles:

"The Committee is concerned that... children of divorced or separated parents may not be able to preserve their identity."

It recommended that the Seychelles

"... review its legislation to ensure...that all children of divorced or separated parents have the legal right to maintain their identity." *(Seychelles CRC/C/15/Add.189, paras. 30 and 31)*

And with Peru, at the time of its Initial Report:

"The Committee is concerned that, due to the internal violence, several registration centres have been destroyed, adversely affecting the situation of thousands of children who are often left without any identity document, thus running the risk of their being suspected of involvement in terrorist activities... "Special measures should be undertaken to provide undocumented children fleeing zones affected by internal violence with adequate identity documents." *(Peru CRC/C/15/Add.8, paras. 8 and 17)*

Principle 16 of the United Nations High Commissioner for Human Rights 1998 *Guiding Principles on Internal Displacement* provides that "All internally displaced persons have the right to know the fate and whereabouts of missing relatives" and "The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform next of kin on the progress of the investigation and notify them of any result."

Principle 20(2) states that "… the authorities concerned shall issue to [internally displaced persons] all documents necessary for the enjoyment of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents" (see page 311).

Article 9(4) of the Convention requires States to inform children and parents of the whereabouts of each other if the State has had responsibility for their separation (for example through imprisonment, deportation or death). A right to preservation of identity also suggests that the law should place penalties on those who breach it. This certainly is the recommendation of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance: "The abduction of children of parents subjected to enforced disappearance or of children born during their mother's enforced disappearance, and the act of altering or suppressing documents attesting to their true identity, shall constitute an extremely serious offence, which shall be punished as such." (Article 20)

The new International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly in 2006, recognizes the right of victims of disappearance to justice and reparation, and commits ratifying States to criminalizing all forms of enforced disappearance. Article 25 specifically requires measures to prevent and punish the wrongful removal of children of disappeared persons or the tampering with documents giving their true identity. Where these children have been adopted, States must have legal provisions to annul the adoption if it is in the children's best interests to uphold their rights to identity. The Convention stresses that the best interests of the child shall be "a primary consideration" and the child's views should be given due weight. (It should be noted that, under articles 9 and 21 of the Convention on the Rights of the Child, the child's best interests must be paramount in such a decision, not merely a primary factor.)

"Without unlawful interference"

This suggests that the child's right to preservation of identity can be lawfully violated – a suggestion questioned by some countries when this article was being drafted (E/CN.4/1989/48, pp. 55 and 56; Detrick, pp. 295 and 296). Certainly in those cases where the State itself is guilty of a harmful violation, the provision could appear to be too weak since the State also prescribes the laws. However, in some instances, the State will have a valid reason for interfering with a child's identity, for example when this is necessary for the child's best interests or to protect others.

The right of a child who has been "illegally deprived of some or all of the elements of his or her identity" to be provided by the State with "appropriate assistance and protection with a view to speedily re-establishing his or her identity"

This right means that the State must recognize the seriousness to children of any deprivation of their identity by dedicating resources to remedy the situation. The Committee noted the steady progress being made in Argentina, the State that originally proposed the need for article 8:

"The Committee recognizes the work done by the National Commission for the Right to an Identity to recover children missing during the military regime in power from 1976 to 1983, and notes out of an estimated 500 cases of disappearances of children, 73 have been found." *(Argentina CRC/C/15/Add.187, para. 34)*

And the struggle by Rwanda:

"The Committee takes note of the efforts made by the State Party to re-establish the identity of a large number of children evacuated to different countries during and just after the genocide of 1994. However, the Committee is concerned that it has not yet been possible to identify many children and reunite them with their families." *(Rwanda CRC/C/15/Add.234, para. 30)*

It urged El Salvador to do more in this respect:

"The Committee is concerned that the State Party has not taken a more active role in efforts to investigate the disappearance of more than 700 children during the armed conflict between 1980 and 1982.
"In the light of article 8 of the Convention, the Committee recommends that the State Party assume an active role in efforts to trace the children who disappeared during the armed conflict, and, in line with the Human Rights Committee, encourages the State Party to proceed with plans to establish a national commission with adequate resources and capacity to trace the disappeared children. It also encourages the State Party ratify the Inter-American Convention on the Forced Disappearance of Persons." *(El Salvador CRC/C/15/Add.232, paras. 31 and 32)*

"Appropriate assistance"

This could include:

- making available genetic profiling to establish parentage;
- actively tracing relatives or community members of unaccompanied refugee children;
- using the media to advertise missing children and to reunite families;
- ratifying the Hague Convention on the Civil Aspects of International Child Abduction, and generally ensuring that any child-custody cases where an illegal abduction has been alleged (including those relating to international disputes) are expeditiously dealt with at an appropriately senior level in the judiciary, that is, within days or weeks rather than months (see article 11, page 144);
- ratifying the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, and securing that domestic adoption procedures ensure that proper consents have been obtained and that the child's birth identity is officially recorded before an adoption takes place (see article 21, page 296);
- ensuring that any changes to a child's identity, such as name, nationality, parental rights of custody, etc., are officially recorded;
- enabling children to have access to the professional files maintained on them (see article 16, page 209). For example the Committee welcomed an Australian initiative:

  "The Committee notes the national inquiry carried out in 1997... which acknowledged the past policies whereby indigenous persons were deprived of their identity, name, culture, language and family. In this respect, the Committee welcomes the activities undertaken by the State Party to assist family reunification and improve access to records to help indigenous persons trace their families." (Australia CRC/C/15/Add.268, para. 31);

- ensuring that children in state care are encouraged to practise their religion, culture and language of origin;
- amending nationality laws to allow for a "best interests of children" consideration in issues relating to deportation or family reunification, and speeding up nationality and asylum procedures.

The *Manual on Human Rights Reporting,* 1997, advises that appropriate assistance can include "legislative measures, including in the civil and penal areas – for instance to annul any adoption based on an irregular situation, such as the child's abduction, or to penalize such possible offences... the establishment of mechanisms to re-establish the child's identity, such as a national data bank where changes made in the elements of the identity of children (including the name, nationality and family relations) may be kept and, when appropriate, acceded to." (*Manual,* pp. 432 and 433)

In times of war, speedy efforts to reunite parents and children are particularly important. The Committee observed to Sierra Leone:

"The Committee is deeply concerned at the large numbers of children who have been deprived of a family environment through the death of, or separation from, their parents or other family, and at reports of the difficulties and slow progress in tracing separated families and children ...

"The Committee urges the State Party to make every effort to strengthen family tracing programmes and also to plan for the effective provision of alternative care for separated children, with particular focus on unaccompanied children living in the streets of main towns..." (Sierra Leone CRC/C/15/Add.116, paras. 50 and 51)

"Protection"

This includes securing appropriate temporary placement for children while their identity is re-established. It should also involve explaining to the children what is happening and why – ignorance and uncertainty can unnecessarily add to children's insecurity and lack of well-being.

"Speedily re-establishing his or her identity"

The article emphasizes the particular importance of speed where children are concerned. The "identity" of children is not just a matter of parentage and culture of origin. As children grow they may assume the identity of the family or culture in which they live to a point at which it would be a second deprivation of identity to remove them, and therefore unacceptable in terms of the child's best interests. This is a particularly bitter fact for parents who have been illegally separated from their children, whether they were separated by the State or through abduction by individuals. (It should be noted that Argentina originally proposed the words "In particular, this obligation of the State includes restoring the child to his blood-relations to be brought up", but this proposal did not find acceptance. [E/CN.4/1986/39, pp. 8 to 10; Detrick, pp. 292 to 294])

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 8, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 8 is relevant to **the departments of justice, home affairs, foreign affairs, public communication and the media, social welfare and education**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 8 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising?

• Specific issues in implementing article 8

- ☐ Are children able to acquire the nationality of both parents?
- ☐ Are children able to acquire the nationality of the State in which they have lived for a significant period?
- ☐ Are they able to live with their parents in their State of nationality?
- ☐ Are questions of nationality and right to family reunification dealt with speedily?
- ☐ Are any changes of children's name overseen by a judicial process which gives paramount consideration to the best interests of the child?
- ☐ Are such changes fully recorded and the records accessible to the child?
- ☐ Are children able to know and associate with members of their family of origin, so far as this is compatible with their best interests?
- ☐ Are accurate records kept about the identity, and any changes to the identity, of all children?
- ☐ Can children apply to have access to these records?
- ☐ Where parentage is in doubt, are children able to have it established by genetic testing (free of charge if necessary)?

How to use the checklist, *see page XIX*

- ☐ Are other resources provided to trace missing children or missing family members (for example using tracing agencies or the media)?
- ☐ Has the State ratified the Hague Convention on the Civil Aspects of International Child Abduction and the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption?
- ☐ Are all cases dealt with expeditiously where illegal actions relating to children's identity and family relations are alleged to have occurred?
- ☐ Is unlawful interference with children's rights to preserve their identity an offence, subject to penalties?
- ☐ Do education, welfare and justice systems allow the child to enjoy his or her culture, religion and language of origin?
- ☐ Where children are in the care of the State, are accurate records kept about their family of origin and early childhood?
- ☐ Do such children have access to these records?
- ☐ Do placements of children by the State endeavour, where compatible with the child's best interests, to give continuity to the child's ethnic, religious, cultural and linguistic background?

Reminder: **The Convention is indivisible and its articles interdependent. Article 8 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is related to that of article 8 include:

Article 7: birth registration, right to name and nationality and to know and be cared for by parents
Article 9: non-separation from parents except when necessary in best interests
Article 10: international family reunification
Article 11: protection from illicit transfer and non-return from abroad
Article 16: protection from arbitrary interference in privacy, family and home
Article 18: parents having joint responsibility
Article 20: children deprived of family environment
Article 21: adoption
Article 22: refugee children
Article 30: children of minorities or indigenous peoples
Article 35: prevention of sale, trafficking and abduction of children

UNICEF/90-0017/Tolmie

Separation from parents

Text of Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Summary

Article 9 of the Convention on the Rights of the Child enshrines two essential principles of children's rights: first, that children should not be separated from their parents unless it is necessary for their best interests and, second, that all procedures to separate children from parents on that ground must be fair. It also affirms children's rights to maintain relations and contact with both parents, and places a duty on the State to inform parent and child of the whereabouts of either if the State has caused their separation (for example by deportation or imprisonment).

The basic principles are enshrined in the 1959 Declaration of the Rights of the Child: "The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents..." (article 6). These words are echoed and developed in the Convention's preamble: "the child… should grow up in a family environment, in an atmosphere of happiness, love and understanding."

The *Guidelines for Periodic Reports (Revised 2005)* asks States to provide information on what legal or administrative measures there are for securing that the best interests and respect for the views of children are addressed when separation from parents occurs, and for data on the "number of children without parental care disaggregated by causes (i.e., due to armed conflict, poverty, abandonment as a result of discrimination etc.)" (CRC/C/58/Rev.1, pp. 6 and 12).

The International Covenant on Civil and Political Rights provides "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State" (article 23(1), which is mirrored by article 10 of the International Covenant on Social, Economic and Cultural Rights) and: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks" (article 17(1) and (2)). ■

The child's right "not to be separated from parents against their will, except when judged ... necessary for the child's best interests"

The words "against their will" refer either to the parents' will or to the parents' and child's will together; the grammar makes clear that it does not mean the child's will alone. And, in one sense, the right of children to parental care is inevitably subject to the "will" of parents. Infants have no power or ability to choose their caregivers. They are dependent on their family, community and the State to make that choice for them. Moreover, even if young children were in a position to "choose" their parents, they could not force them to act as parents against their will. The State can seek to force parents to financially maintain their children, but it cannot compel parents to care for them appropriately.

Although States cannot be responsible if separation from parents is caused by divorce, the Committee has suggested that research and awareness-campaigns on the effect of divorce on children should be supported, as well as counselling for parents:

"The Committee is concerned at the high rate of divorce – considered among the highest in the world – in the State Party and its possible negative impact on children. The Committee is also concerned at the lack of research and studies on the harmful consequences on children of divorces and early marriages as well as the insufficient measures to create public awareness on the detrimental effects of divorce.

"… The Committee… recommends that the State Party undertake research and studies on the negative impact of family disruption on children as well as to continue with its awareness-raising on this issue. Furthermore, the Committee recommends to the State Party to improve counselling services for parents."
(Maldives CRC/C/15/Add.91, paras. 17 and 37)

The article gives two examples of when it may be necessary to separate children from one or both parents: first, when the parents have abused or neglected the child and, second, when parents live apart. A third example was suggested by the United States of America representative during the drafting of the Convention: "where there is a disagreement between parent(s) and child as to the child's place of residence" (E/1982/12/Add.1, C, pp. 49 to 55; Detrick, p. 168). This suggestion was dropped on the grounds that an exhaustive list of reasons should not be attempted. The two examples are simply illustrations of cases when separation from parents may occur.

However, the third example given by the United States of America does raise a profound difficulty for some children – when parents agree between themselves where the child should live, or how parental access should be organized, but when the child is unhappy with the arrangement. Few States make provision for the child in such circumstances, arguing that the State should not interfere in the private arrangements of parents. But if the State accepts that it has a role as arbitrator when there are disputes between husband and wife, then it should accept its role as arbitrator when there is dispute between parent and child – at least to the extent of establishing judicial machinery for the child to make a case for arbitration. Children may have good reasons for not wishing to live with parents. When the Committee raised the "increasing number of street children" with the Russian Federation, it recommended that the State Party:

"… Promote and facilitate the reunification of street children with their parents and other

relatives or provide alternative care, taking into account the children's own views..." (Russian Federation CRC/C/RUS/CO/3, para. 75)

On the other hand, children may want to live with parents even when the State thinks they are inadequate:

"The Committee notes that children are often placed in alternative care without their views being adequately taken into account, and it is concerned that they authorities do not always adequately support the maintenance of fundamental parent-child links...
"The Committee... recommends that the State Party sufficiently take into account children's views in any decision regarding their placement in alternative care. Furthermore, it recommends that the parent-child relationship not be negatively affected by placement in alternative care." (Finland CRC/C/15/Add 272, paras. 28 and 30)

Other aspects of "unnecessary" separation from parents include:

State care. Article 20, on alternatives to family life, provides for those children who will have to be temporarily or permanently deprived of their family environment if that is in their best interests. Some States adopt more prescriptive criteria than others for determining what the best interests of children are. Where laws specify grounds for state care, they must be examined carefully for discriminatory application. For example, homelessness or poverty of the parents should not be grounds in themselves for removal of the child, nor should a parent's failure to send the child to school. If these deficiencies are causing the child's development to be impaired, then the State should put its resources into making good the deficiency while maintaining the child in the family. For example, the Committee told Nepal that it must abolish its legal provision allowing the poverty of parents as a legal ground for adoption (Nepal CRC/C/15/Add.261, para. 54), and has noted with concern that a number of countries have children in state care because of the family's poverty, such as Azerbaijan and Hungary:

"The Committee is concerned about the insufficient support for disadvantaged families and the fact that, as a result, children are often unnecessarily separated from their parents...
"The Committee recommends that the State Party provide adequate support to disadvantaged families, including counselling and educational services, and ensure that separation of children from their parents only takes place if necessary, in their best interest and on precise legal grounds." (Azerbaijan CRC/C/AZE/CO/2, paras. 37 and 38)

"The Committee is concerned about the high rate of children placed in alternative care, often for financial reasons, many of them for a long period of time, including very young children and children with disabilities... The Committee is also very concerned that not enough efforts are made to return children to their families as soon as possible." (Hungary CRC/C/HUN/CO/2, para. 30)

Article 23 of the Convention on the Rights of Persons with Disabilities, adopted by the General Assembly in December 2006, repeats the provisions at the beginning of article 9(1) of the Convention on the Rights of the Child, adding: "In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents." And to prevent "concealment, abandonment, neglect and segregation of children with disabilities" States must "undertake to provide early and comprehensive information, services and support to children with disabilities and their families."

The Committee was also concerned at the number of Roma children in European institutions. Disproportionate numbers of children from ethnic minorities in care may suggest discrimination either in professional attitudes or family-support services. Gender may also be a factor, as was raised with Saint Kitts and Nevis:

"... It is recommended that the State Party undertake a study to assess the situation of boys within the family environment and their susceptibility to placement in alternative and/or foster care." (Saint Kitts and Nevis CRC/C/15/Add.104, para. 23)

Failure to keep children in contact with their parents may occur when the State makes arrangments for them to live away from home, for example in institutions, specialist schools, street children projects, foster care, "simple adoption", etc. The loss of contact may be convenient to the caregiver, particularly when the child's parents appear to be hostile, disruptive or irrelevant to the child's progress; arguments are sometimes raised that the child needs to "settle in" or that seeing parents upsets the child. However, evidence strongly suggests that children are less likely to be reunited with their parents if contact is not maintained with them during the early months of alternative care. Planning of placements should secure that contact can be easily maintained by the parents, who may be unable to travel distances or visit at set times. The Committee raised such concerns with the Czech Republic:

"... the Committee is concerned that... children are often placed at significant distances from parents, who, in turn, may not be aware of

their visiting rights; punitive measures such as limitation of phone calls or meetings with parents may also be used... Contacts with parents are sometimes made conditional upon the behaviour of children in care." (Czech Republic CRC/C/15/Add.201, para. 44)

It urged Poland to:

"... Upgrade the capacity and skills of social workers so that they are better able to intervene and assist children in their own environment." (Poland CRC/C/15/Add.194, para. 37)

Abandoned, runaway or unaccompanied children living or working on the streets. Parents in extreme circumstances of poverty, violence or armed conflict may abandon their children, or children and parents may simply lose contact with each other as a result of the pressure of such events; sometimes children leave home for the streets because of violence or exploitation by their parents. The result is that most large cities in the world contain populations of children living independently of their families. State provision for these children should always give them an opportunity of finding and being reunited with their parents and family. For some this may not be possible, but others will have their rights under article 9 breached by assumptions that they are best provided for away from their original family. The Committee has encouraged state efforts in tracing these families:

"... concern is expressed, inter alia, *at reports regarding difficulties and slow progress in tracing separated families and children... "The Committee urges the State Party to make every effort to strengthen family tracing programmes..."* (Colombia CRC/C/15/Add.137, paras. 40 and 42)

For further discussion of children on the streets, see articles 2 and 20 (pages 30 and 286), and of tracing programmes, see article 8 (pages 114 *et seq.*).

Children in hospitals. Parents may not be allowed to visit or, where appropriate, remain with their children in hospital. Again, this form of separation, more common in industrialized than developing countries, is maintained primarily for the convenience of the staff, although the medical needs of the child patient may be cited. In fact, it is now generally recognized that children's recovery is greatly aided by having parents with them in hospital. Though hospital practice is usually controlled by medical staff and hospital managers, the State has a role in encouraging child-friendly hospitals. The Committee raised this matter with Croatia:

"The Committee is ... concerned about the information that mothers are not allowed to stay with their hospitalized children free of charge unless the child is less than 6 months of age... "The Committee... recommends that children not be separated from their parents when they are hospitalized." (Croatia CRC/C/15/Add.243, paras. 51 and 52)

Parents in prisons. The imprisonment of parents, particularly of mothers of dependent young children, is deeply problematic, because the child is being punished along with the parent. While it is argued that the punishment of offenders always has repercussions for innocent relatives, where children are concerned the effects can be particularly catastrophic to them and costly to the State, both immediately, in terms of providing for the children's care, and long term, in terms of the social problems arising from early separation. One solution is to accommodate young infants together with their mothers in prison; the other is to find more constructive, non-custodial sanctions. Where possible, the latter course should be adopted. It is arguable that article 3(1) of the Convention requires courts when sentencing parents to consider the best interests of affected children as "a primary consideration".

Although babies tend to be unconcerned about where they live so long as they are with their mothers, difficulties may arise about when and if to separate mother and child as the child grows older. The Committee has voiced concerns both about accommodating children together with their parents in prison and failures to keep imprisoned parents and children in contact with each other, as, for example, shown its comments to Nepal:

"The Committee is concerned about the significant number of children who are living in adult prisons with their parents, often in poor conditions that fall short of international standards... "The Committee recommends to the State Party that it review the current practice of children living with their parents in prison, with a view to limiting the stay to instances in which it is in his/her best interest, and to ensuring that the living conditions are suitable for his/her needs for the harmonious development of his/her personality. The Committee also recommends that children of parents in prison should be provided with adequate alternative care, for instance, within the extended family and be allowed regular contact with their parents." (Nepal CRC/C/15/Add.261, paras. 51 and 52)

It recommends a systematic approach:

"The Committee recommends that the State Party develop and implement clear guidelines on the placement of children with their parent in prison (e.g. the age of the children, the

length of stay, contact with the outside world and movement in and outside the prison) in instances where this is considered to be in the best interests of the child, and ensure that the living conditions, including health care, in prisons are adequate for the child's development, as required by article 27 of the Convention. It further recommends that the State Party develop and implement adequate alternative care for children who are removed from prison, and such care is regularly supervised and allows the child to maintain personal relations and direct contact with its parent remaining in prison." (Mexico CRC/C/MEX/CO/3, para. 40)

Article 2(2) protects children against "all forms of discrimination or punishment on the basis of the status, activities... of the child's parents, legal guardians or family members" (see page 30). Although mothers have been singled out as being particularly crucial to the development of young children, States should recognize that the imprisonment of fathers can also be very detrimental, depriving children of important role models and often causing the family to become impoverished.

Child offenders. Removal of offending children from their families may be necessary in the best interests of the child, for example where judicial authorities are satisfied that the parents have contributed to their child's criminality. However, care orders removing parental rights should not be a part of the sentencing tariff for juvenile offending and should only occur when this is in the child's best interests. Rule 18(2) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the "Beijing Rules", states: "No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of his or her case make this necessary." As regards the imprisonment of children for offending, and their consequent separation from families, this should only occur as a last resort and in their best interests, as discussed under article 37 (see page 556).

Parents working abroad. Across the world fathers, and increasingly mothers too, are forced to leave their children behind when they seek employment abroad. On Sri Lanka's Initial Report the Committee expressed concern about

"... the situation of children whose mothers are working abroad, especially in Gulf countries, leaving their children behind. Those children (between 200,000 and 300,000) often live in difficult circumstances and may be subjected to different types of abuse or exploitation."

Its proposed solution was not, as might have been expected, to recommend improvements to Sri Lankan services for these motherless children, but, in keeping with article 9:

"To avoid the abandonment of children by mothers working abroad, the Committee suggests that the State Party engage in dialogue with receiving countries to ensure an international agreement that permits migrant workers to take their children abroad. Ratification of the International Convention on the Rights of All Migrant Workers and Members of Their Families should be considered." (Sri Lanka CRC/C/15/Add.40, paras. 16 and 33)

When Sri Lanka made its Second Report, the Committee noted a new programme for children of migrant workers,

"... yet it is concerned that families of migrant workers receive little or no assistance with their child-rearing responsibilities while they are working abroad...

"The Committee recommends that the State Party develop a comprehensive policy to support the families and caregivers of children of migrant workers in their child-rearing responsibilities." (Sri Lanka CRC/C/15/Add.207, paras. 30 and 31)

The Committee was similarly concerned about Saint Vincent and the Grenadines, where

"the difficult domestic employment situation has obliged many parents, and sometimes both parents, to migrate, leaving children in the care of grandparents or under the responsibility of an older child,"

and recommended that:

"... the State Party... make every effort to provide support to children within the context of the family and consider, inter alia, *means of improving employment prospects within the State Party for parents."* (Saint Vincent and the Grenadines CRC/C/15/Add.184, paras. 30 and 31)

Immigration and deportation. Article 10 deals with the limited rights of children to family reunification when they or their parents are (or wish to be) in different countries. When articles 9 and 10 were being drafted the chairman of the Working Group drafting the Convention made a declaration: "It is the understanding of the Working Group that article 6 [now article 9] of this Convention is intended to apply to separations that arise in domestic situations, whereas article 6 *bis* [now article 10] is intended to apply to separations involving different countries and relating to cases of family reunification. Article 6 *bis* [now 10] is not intended to affect the general right of States to establish and regulate their respective immigration laws in accordance with their international obligations." The Chairman's declaration caused some concern. Three State representatives in the Working Group responded

by emphasizing that "international obligations" included principles recognized by the international community, particularly human rights and children's rights principles – including, of course, the principles of article 9. The representative of the Federal Republic of Germany "reserved the right to declare that silence in the face of the chairman's declaration did not mean agreement with it" (E/CN.4/1989/48, pp. 32 to 37; Detrick, pp. 181 and 182).

Such a declaration is, in any event, no more than a clarification of drafting intentions: though influential it does not carry legal force. The declaration was cited by Canada during one of that country's oral sessions with the Committee. A Committee member commented in relation to the issues of immigration control and deportation: "Under article 9, States Parties should ensure that there would be no separation unless it was in the best interests of the child concerned and determined by competent authorities subject to judicial review. Concern had been expressed at how a child's best interests were taken into consideration when decisions to deport parents were made. Were family values taken into account by decision-makers? Article 9 also referred to the need for judicial proceedings to give all interested parties the right and opportunity to be heard. It was unclear when and how a child could make his or her views known and with what legal support. Article 12, paragraph 2, established the right of children to be heard in any administrative and judicial proceedings." (Canada CRC/C/SR.216, para. 28)

The Canadian representative argued that: "International law did not provide an express right to family reunification nor did the Convention recognize family reunification as an express right... One issue of concern discussed in the United Nations Working Group on the draft convention in December 1988 had been whether the provision in article 9 concerning non-separation from parents would require States to amend their immigration laws to avoid the separation of children from their parents. The Working Group had requested that a statement should be included in the report on its deliberations to indicate that article 10 on family reunification was the governing matter on that issue. It had been the Working Group's understanding that article 10 was not intended to affect the general right of States to establish and regulate their respective immigration laws in accordance with their international obligations." However, he did concede that international treaties clearly recognized "the vital importance of family reunification". (Canada CRC/C/SR.216, paras. 47 and 55)

Despite this discussion, the Committee member expressed the view that provisions on family reunification under article 10 should be seen in the light of article 9 (Canada CRC/C/SR.216, para. 84). The subject was not addressed when Canada submitted its Second Report.

Other aspects of immigration have been raised with other countries:

"The Committee remains concerned that... the national requirements and procedures for family reunification for refugee families, as defined under the Convention relating to the Status of Refugees of 1951, are complex and too long...
"The Committee recommends that the State Party take all necessary measures... to ease family reunification requirements and procedures." (Germany CRC/C/15/Add.226, paras. 54 and 55)

"The Committee is concerned that the best interests of the child are not adequately taken into consideration in cases where foreign nationals who have children in Norway are permanently deported as a consequence of having committed a serious criminal offence...
"The Committee urges the State Party to ensure that the best interests of the child are a primary consideration in the decisions taken regarding deportation of their parents." (Norway CRC/C/15/Add.263, paras. 21 and 22)

"The Committee is deeply concerned that the existing quotas for persons entering the Hong Kong and Macau SARs [Special Administrative Regions] from the mainland and regulations regarding the right of abode in the SARs contribute to the separation of children from their parents and hinder family reunification." (China CRC/C/CHN/CO/2, para. 50)

Japan made a declaration on deportations, about which the Committee expressed concern: "The Government of Japan declares that paragraph 1 of article 9 of the Convention on the Rights of the Child be interpreted not to apply to a case where a child is separated from his or her parents as a result of deportation in accordance with its immigration law." (CRC/C/2/Rev.8, p. 26; Japan CRC/C/15/Add.90, para. 6)

Armed conflict. The separation of parents and children may arise during armed conflict (article 38) or when they have become refugees (article 22). The consequences of civil war or economic breakdown can be devastating to the family unit.

Sometimes the state government can do little about the upheavals caused by armed conflict, but if the reins of power are in its hands, it has clear obligations towards children, as the Committee informed Myanmar on its Initial Report:

"While welcoming the recent peace agreements between the Government and a great majority of rebel armed groups in the country, the Committee strongly recommends the State Party to prevent any occurrence of forced relocation, displacement and other types of involuntary population movements which deeply affect families and the rights of children. The Committee also recommends that the State Party reinforce its central tracing agency to favour family reunification." (Myanmar CRC/C/15/Add.69, para. 40)

On Myanmar's Second Report the Committee continued to express deep concern about impact of war on family life, particularly the "disintegration" of families from ethnic minorities iand the conscription of child soldiers by both sides (Myanmar CRC/C/15/Add.237, paras. 42 and 66).

Similar concerns were raised with Nepal, which was recommended

"... to undertake effective measures for the reunification of separated families, by implementing programmes for the reinforcement of existing structures such as the extended family..." (Nepal CRC/15/Add.261, para. 50)

Traditions or customs. The separation of children and parents because of custom perhaps most commonly occurs when a child is conceived out of wedlock. In the past, many mothers might abandon such children or would be forced to give them up for adoption. This cultural pressure still persists in some parts of the world – for example, the Committee said to Sri Lanka:

"... The Committee also encourages the authorities to give full support to mothers of children born out of wedlock wishing to keep their child." (Sri Lanka CRC/C/15/Add.40, para. 34)

Custom may also affect the decisions that have to be made about where children live and how much contact they have with the non-resident parent following parental separation. Such decisions ought to be determined solely in accordance with the child's best interests but sometimes are subject to tradition or religious doctrine – for example that adulterous parents forfeit rights of access to children or that children must live with the paternal family upon the death of the father. Under articles 18 children have the right to be cared for by both parents, who share common responsibility for their upbringing, development and best interests. Decisions which automatically allocate these responsibilities are contrary to the Convention if they are made without reference to the needs and interests of the individual child concerned (see below, and article 18, page 235, for further discussion).

The child's right to have any decision that separation from his or her parents is in his or her best interests to:

- be undertaken by competent authorities;
- be subject to judicial review;
- be in accordance with applicable law and procedures;
- give all interested parties the opportunity to participate and make their views known

Removal of children from their parents without justification is one of the gravest violations of rights the State can perpetrate against children. At the same time, the State has a responsibility to protect children from parental harm. For this reason, the Convention requires that such actions be governed by clear and just procedures, as specified in article 9. The Committee is alert to States having too casual an approach to parent-child separation, for example, raising concerns with Lithuania about the large numbers of children removed from parental care, recommending

"... that the State Party take all possible measures, including establishment of precise criteria for the limitation of parental rights, in order adequately to protect parental rights and the parent-child relationship and thereby ensure that a child is not separated from his or her parents against their will except when competent authorities subject to judicial review determined, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. The Committee also recommends that the State Party take all necessary measures to ensure that both parents and children are given an opportunity to participate in the proceedings and make their views known in accordance with article 9 of the Convention." (Lithuania CRC/C/LTU/CO/2, para. 40)

"Competent authorities"

The word "competent" relates to an authorized position rather than to ability; nonetheless such authorities must have skills to determine, on the basis of the evidence, what is in the child's best interests. Such skills could be acquired through formal training (for example, in psychology, social work or children's legal casework) or an equivalent weight of experience (for example, through being a community or religious arbitrator). The Committee was concerned about the situation in Saint Vincent and the Grenadines, where "only the police and not the social services have the authority to remove a child from

a family situation in which the child is suffering abuse or neglect" noting that "this may add to the trauma suffered by the child." It recommended that social services be given the necessary legal authority to remove children (Saint Vincent and the Grenadines CRC/C/15/Add.184, paras. 38 and 39). On the other hand, the Committee has expressed concern to other countries about the adequacy of social workers' training and professional conduct, for example to Slovenia:

"The Committee appreciates the work and the role of Social Work Centres in providing administrative and other types of assistance to children and families, but is concerned at the lack of appropriate and effective measures to strengthen professional capacities of the staff of these centres, as well as the often lengthy procedures applied."

"The Committee recommends that the State Party take all necessary steps to provide ongoing training to the staff of Social Work Centres and provide for efficient administrative, legal and practical measures to ensure quality and efficiency of all activities of these institutions." *(Slovenia CRC/C/15/Add.230, paras. 30 and 31)*

The State should be able to demonstrate that the competent authorities are genuinely able to give paramount consideration to the child's best interests, which presupposes a degree of flexibility in this decision-making. Any inflexible dogma defining "best interests", for example stating that children ought to be with their fathers or mothers, should be regarded as potentially discriminatory and in breach of the Convention. It is true to say that article 6 of the Declaration of the Rights of the Child, the precursor of the Convention on the Rights of the Child, did make a statement in favour of keeping, save in exceptional circumstances, children of "tender years" with their mothers. However, this bias towards giving mothers custody young children, though common in many countries and an important protection in very patriarchal societies, does not find expression in the Convention. The Committee expressed this view to a number of Muslim countries who award custody of young children to mothers and older children to fathers, for example Pakistan:

"The Committee is concerned that the State Party's legislation uses age limits, instead of the best interests of the child, as criteria in determining custody in cases of divorce. Such permission, in addition to implying that siblings can be separated, discriminates between the sexes and fails to acknowledge the child's right to express her/his views and have them taken into account." *(Pakistan CRC/C/15/Add.217, para. 44)*

"Subject to judicial review"

The phrase carries with it expectations about the principles of natural justice and fair hearings. These principles include that:

- the judges or arbitrators have no personal interest in the case;
- they are as well informed as possible about all the circumstances of the case;
- they provide reasons for their rulings;
- all parties are heard; and
- all parties hear the evidence (if necessary through the provision of interpretation).

While this part of article 9 was being drafted, country representatives repeatedly emphasized the need to expedite the judicial process so that the "separation period should be made as short as possible under national legislation" (E/1982/12/Add.1, C, pp. 49 to 55; Detrick, p. 168). Although the need for speed is not explicitly mentioned in the article, it should be assumed to be a necessary component of any judicial review in order to secure compliance with article 8(2) (duty to "speedily" re-establish child's identity, including family ties). The Committee noted "the very long duration of custodial disputes in Finland, which may have a negative impact on children" (Finland CRC/C/15/Add.272, para. 26).

The article makes no mention of privacy of the proceedings. However article 14(1) of the International Covenant on Civil and Political Rights provides that the public may be excluded from judicial hearings "when the interest of the private lives of the parties so requires" and that judgements of hearings should generally be made public "except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children". Article 3 of the Convention on the Rights of the Child, relating to the best interests of the child and article 16 (right to privacy) suggest an assumption that judicial hearings under article 9 should be held in private.

In addition rule 3(2) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the "Beijing Rules", extends the Rules' scope to care and welfare proceedings: "Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings." The "Beijing Rules" calls for fair hearings with sufficient flexibility to respond to the varying special needs of the children concerned, conducted "in an atmosphere of understanding". The Rules

stresses the need for privacy, speed, the child's rights to representation and to the presence of parents, appeal procedures, powers to discontinue proceedings, good record keeping and research-based policy.

Some countries entered reservations to article 9 on the grounds that their social work authorities had powers to take children into care without a court hearing or judicial review. This is not compatible with the rights of the child. For example, the inclusion of care and welfare proceedings in the "Beijing Rules" stresses the point that removing children from their parents is as serious a step as depriving them of their liberty, and merits a fair hearing conducted under the rules of natural justice. The Committee has systematically encouraged the withdrawal of all such reservations. Not only should such hearings operate under due process, the courts should be specialized and well-funded, as the Committee recommended to Nicaragua:

"... that the State Party... establish specialized family courts with trained judges and other professionals involved, and ensure that family law practice is accessible to everybody and that family law procedures are conducted without undue delay." *(Nicaragua CRC/C/15/Add.265, para. 37)*

And, expressing its deep concern to Lebanon

"... at the large number of children placed in institutions... without judicial procedure",

it recommended that the State Party

"... take effective measures to implement fully the legislation relating to alternative care of children to ensure that a child is not separated from his or her parents against its will, except when competent authorities subject to judicial review and procedures determine that such separation is necessary for the best interests of the child." *(Lebanon CRC/C/15/Add.169, paras. 36 and 37)*

"In accordance with applicable law and procedures"

These words again stress the need for legislation governing any procedure where the child is separated from parents against their will, whether it is the State intervening to remove the child or one of the parents seeking custody of the child.

If, however, laws leave criteria for separation open to judicial discretion so that it is entirely up to the judge to decide what is in the best interests of the child, then the State must be satisfied that judges exercise this discretion objectively.

"... all interested parties shall be given an opportunity to participate in the proceedings and make their views known"

This aspect of a proper judicial review – the need to hear from all relevant parties – is given special emphasis within the Convention for good reasons. It reminds States that both parents must be heard, even when one parent has not had primary care of the child (for example in a case of child neglect by the child's mother, even a non-resident father of the child should be given an opportunity to show he is able and willing to look after the child) or when one parent is out of the country. It also enables other "interested parties" to participate in the proceedings – for example members of the child's extended family, or professionals with specialist knowledge of the child. "Interested parties" is undefined within the Convention, so that interpretation is left to domestic law or the judge of the case; however, it should be assumed that the widest possible interpretation is needed, since a sound decision on best interests of the child is dependent on having the fullest possible information.

The child, in particular, should not be forgotten. He or she is clearly the most "interested party" involved in the case. Article 12(2) provides that children specifically be given opportunities to be heard directly or through a representative "in any judicial and administrative proceedings affecting the child". Proceedings under article 9 clearly affect the child. Article 12(2) does not specify when the child should be heard directly and when through a representative, but given the general right under 12(1) for children to "express those views freely in all matters affecting the child", it should be assumed that wherever children wish to speak directly to the adjudicators, this should be arranged, but that, in addition, where children are not able to represent their views adequately (through incapacity or because they need an advocate in an adversarial system), appropriate arrangements should be made. However States must recognize that appointing a person to represent the child's best interests is **not** the same as children being given "an opportunity to ... make their views known" (article 9(2)) or "to be heard" (article 12(2)). Professional opinion as to the child's best interests may sometimes conflict with the child's own view of what is best. In such circumstances, States are obliged under the Convention to ensure that the child's views are also heard.

The Committee congratulated Sweden on its "remarkable efforts" to ensure children's views are heard, but nonetheless remained concerned that "some children and young persons do not feel they have any real influence in matters

concerning their life in society". It recommended that Sweden

"... Ensure that administrative or other decisions relevant to children contain information on how the views of the children were solicited, on the degree to which the views of children were adopted and why... [and] ... consider providing children in very conflicting custody and visitation disputes with appropriate assistance." (Sweden CRC/C/15/Add.248, paras. 23 and 24)

The Committee also expressed concern to Haiti

"... at the high number of children who are separated from their parents... [and] ... at the fact that the views of the child are not taken into consideration when such decision is taken."

It recommended that

"... child is given an opportunity to participate in the proceedings and that he or she can make his or her views known." (Haiti CRC/C/15/Add.202, paras. 38 and 39)

States sometimes specify an age at which children themselves can determine decisions about custody and access (that is, residence and contact), usually with a caveat that the child's decision can be overridden in exceptional circumstances if the child's welfare might actively be harmed by his or her choice. The age appears to range from 7 to 16. Such provisions are not contrary to the Convention. However, provisions that specify an age at which the child's views should be taken into account are questionable, since the expressed views of children of all ages should be considered under article 12 (see page 149).

The child's right "to maintain personal relations and direct contact with both parents on a regular basis" unless contrary to best interests

This right reflects the principle of article 18 that "both parents have common responsibilities for the upbringing and development of the child" (see page 235). States vary as to the care they take in protecting this right of children. The Republic of Korea entered a reservation to article 9(3), but told the Committee that it was considering withdrawing the reservation (CRC/C/2/Rev.8, p. 36; Republic of Korea CRC/C/SR.276, para. 14). The Committee nonetheless informed the Republic of Korea that this reservation raised questions about its

"...compatibility with the principles and provisions of the Convention, including the principles of the best interests of the child and respect for the views of the child." (Republic of Korea CRC/C/15/Add.51, para. 8)

On its Second Report, the Republic of Korea was encouraged

"... to expedite the process of reforming the Civil Act so that both children and parents are guaranteed the right to maintain contact with each other..." (Republic of Korea CRC/C/15/Add.197, para. 10)

Too often, children lose the chance to maintain contact with the non-residential parent because of the needs of the residential parent (for example to live at a distance from the other parent) or because of the parents' acrimonious relationship. The Committee raised its concerns in this respect with Antigua and Barbuda and with Liechtenstein:

"The Committee is concerned that currently, no legal provisions exist to protect the right of a separated parent and/or child to remain in contact with each other.
"The Committee recommends that the State Party review existing legislation to ensure adequate protection of the right of a separated parent and/or child, with due consideration given to the best interests of the child." (Antigua and Barbuda CRC/C/15/Add.247, paras. 39 and 40)

"The Committee is concerned that the father of a child born out of wedlock has no standing to claim custody and that custody is automatically given to the mother...
"The Committee recommends that the State Party amend its legislation to provide fathers the opportunity to request custody of their children born out of wedlock, where possible as a joint custody with the mother." (Liechtenstein CRC/C/LIE/CO/2, paras. 18 and 19)

Courts may correctly refuse to enforce access if this is likely to have adverse consequences for the child. But while legislation often decrees that the child's best interests shall be paramount in such decisions, the law does not always make clear that these best interests are generally interpreted as meaning regular contact with both parents. Moreover, States could often put more resources into providing practical assistance to children whose parents are in conflict, for example by providing neutral meeting places or the supervision of access.

The right of family members, and specifically parents and children, to be given on request the essential information concerning the whereabouts of a parent or child who

has been separated because of an action initiated by the State (for example, detention, imprisonment, exile or death from any cause in custody), unless the provision of information would be detrimental to the well-being of the child

A failure to ensure that parents are told where their children have been detained, or that children are told of the whereabouts of their parents, seems to be an obvious abuse of human rights and reflects international rules regarding the treatment of prisoners (see article 40, page 601). Circumstances in which provision of information would be detrimental to the child are likely to be rare and exceptional. The presumption should be that children will be more damaged by ignorance of their parents' whereabouts (and equally, that imprisoned children will be more damaged by their parents not being told where they are) than by the discovery of the absent family member's fate, however shocking. Oman has entered a reservation to this paragraph stating that "or to public safety" should be added to the words "unless the provision of information would be detrimental to the well-being of the child" (CRC/C/2/Rev.8, p. 34). But even when States are troubled by extreme forms of terrorism, it is difficult to imagine how telling a child the whereabouts of his or her parent, or vice versa, could jeopardize public safety. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty states that parents and relatives must be informed without delay of the fact of the child's detention, reasons for it and other details.

The wording refers only to "essential information concerning the whereabouts", which might be insufficient information in some cases – certainly in the case of death. States should also ensure that family members are given essential information as to cause – why the person has been imprisoned, deported, died in custody and so forth – and other relevant details (for example when they can see the family member or what their legal rights are). The qualification that the information need only be provided "upon request" was specifically sought by some of the State representatives in the drafting group, although it is hard to see how the qualification enhances children's rights (E/CN.4/1983/62, pp. 4 to 8; Detrick, p. 175). Children and parents should clearly be informed about each other's whereabouts (unless such information is detrimental to the child's well-being) whether or not they have made a request for the information. The Committee made these points to the People's Democratic Republic of Korea:

"The Committee is concerned at the information that the whereabouts of parents may not be provided to children if the parents have been sentence to reform through labour or have been punished by death for a crime. "The Committee recommends that the State Party take all necessary measures in line with article 9, paragraph 3, of the Convention to keep children informed about the whereabouts of their parents, and to fully implement their right to maintain personal relations and direct contact with both parents on a regular basis." *(People's Democratic Republic of Korea, CRC/C/15/Add.239, paras. 42 and 43)*

The right for requests for such information not to entail "adverse consequences for the person(s) concerned"

This requirement must protect both the person seeking the information and the person to whom the information refers. Again, these are matters of human rights, only needing to be confirmed because of documented cases of abuse. One example where requests for information by the State might unwittingly entail adverse consequences is when inquiries are made about the relatives of children seeking asylum, causing unintended repercussions for those relatives.

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 9, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 9 is relevant to the **departments of justice (criminal and civil), social welfare, health and education**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 9 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 9 likely to include the training of the **judiciary, lawyers, social workers, hospital staff and those working in the juvenile justice and immigration systems**)?

• Specific issues in implementing article 9

- ☐ Does the State ensure that parents and children are separated against their will by State authorities only when it is necessary to protect the best interests of the child?
- ☐ Does domestic law enable judicial intervention on behalf of the child when there is disagreement between the parents, or between the parents and the child as to the child's place of residence or as to access to the child by a parent?
- ☐ Does the State ensure that contact between parents and children in institutions (such as children's homes or boarding schools) or placements (such as foster care or respite care for children with disabilities) is maintained to the maximum extent compatible with the child's best interests?
- ☐ Do programmes for those children living or working on the streets respect the child's right not to be separated from his or her parents unless it is necessary for his or her best interests?
- ☐ Are hospitals required or encouraged to make arrangements for parents to be with their children in hospital whenever practicable?

How to use the checklist, *see page XIX*

- ☐ Does the criminal justice system have regard for the need for mothers not to be separated from their babies?
- ☐ Does the criminal justice system have regard for the need for parents not to be separated from their children?
- ☐ Does the criminal justice system ensure that juvenile offenders are not separated from their parents except where competent authorities have determined it is necessary for the best interests of the offender, or as a last resort for the shortest appropriate period?
- ☐ Do laws and procedures governing the deporting of parents under immigration law pay regard to the child's right not to be separated from his or her parents unless necessary for his or her best interests?
- ☐ Do provisions for the family reunification of immigrants and refugees pay regard to the child's rights not to be separated from parents unless necessary for his or her best interests?
- ☐ In times of armed conflict, are forced relocations of civilian populations avoided and all measures adopted for tracing and reuniting children and parents separated by these events?
- ☐ Are measures taken by the State (for example through public education campaigns) to combat traditional customs that separate parents and children unnecessarily?
- ☐ Does the State provide practical or psychological assistance to families in order to prevent unnecessary separation of parents and children?
- ☐ Are all laws specifying the grounds justifying the State in separating children from parents free from discrimination (for example, in relation to families living in poverty or ethnic minority families)?
- ☐ Are all laws specifying the grounds justifying separation from parents free from dogma as to children's best interests (for example that children are better off with their fathers than their mothers or vice versa)?
- ☐ Are all decisions that hold separation from parents necessary for the child's best interests made by authorities competent to determine what these best interests are?
- ☐ Do these authorities have access to all relevant information in this determination?
- ☐ Are these decisions subject to judicial review?
- ☐ Are these cases dealt with speedily?
- ☐ Are children's rights to privacy safeguarded in such cases?
- ☐ Are all relevant people, including the child, able to participate and be heard by those determining these cases?
- ☐ Are there no age limits on the right of the child to participate or be heard?
- ☐ Are the child's views heard if he or she disagrees with the professionals reporting to the court on his or her best interests?
- ☐ Are the proceedings impartial and fair?
- ☐ Does the law enshrine the principle that children should, wherever possible, have regular contact with both their parents?

How to use the checklist, *see page XIX*

- ☐ Is practical assistance given to ensure contact is maintained in cases where parents are in conflict?
- ☐ Does the State provide practical assistance in discovering the whereabouts of parents and children who, for whatever reason, have become separated?
- ☐ Unless detrimental to children's well-being, are children and parents (and other family members, if appropriate) always informed of the whereabouts of the other in circumstances where they have become separated because of an action of the State (for example, detention, imprisonment, exile or death)?
- ☐ Are those requesting such information protected from adverse consequences?

Reminder: **The Convention is indivisible and its articles are interdependent. Article 9 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is related to that of article 9 include:

Article 7: right to know and be cared for by parents
Article 8: right to preservation of identity, including family relations
Article 10: international family reunification
Article 11: protection from illicit transfer and non-return
Article 16: protection from arbitrary interference in privacy, family and home
Article 18: parents having joint responsibility
Article 20: children deprived of their family environment
Article 21: adoption
Article 22: refugee children
Article 24: health services
Article 25: periodic review of treatment when placed by the State away from families
Article 35: prevention of sale, trafficking and abduction of children
Article 37: deprivation of liberty
Article 40: administration of juvenile justice

Entering or leaving countries for family reunification

Text of Article 10

1. In accordance with the obligations of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by the States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public)*, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.*

Article 10 of the Convention on the Rights of the Child is concerned with rights to "family reunification" of children who are, or whose parents are, involved in entering or leaving a country. The article requires States to deal with family reunification "in a positive, humane and expeditious manner" and to allow parents and children to visit each other if they live in different States. Most families affected by article 10 are either so-called "economic migrants", refugees (although it should be noted that parents or children of refugees may seek entry for the purposes of family reunification rather than asylum) or children of separated parents living in different countries..

While family unity is a fundamental principle of the Convention, the wording of article 10 is notably weaker than that of article 9 in so far as the right to family reunification is not expressly guaranteed (even though article 10 makes an express reference to article 9(1)). The tentative wording of article 10 reflects concerns about immigration control – a cause of great anxiety to richer nations, haunted by the spectre of mass migrations of the world's poor.

Summary

The article does not directly address the right of children or their parents to "remain" for the purposes of family reunification, taking in the whole question of the deportation of parents. However, by implication, since a deported parent would at once be in a position to wish to re-enter the country, these cases can be assumed to be covered by this article (as well as by article 9, see page 121).

Along with encouraging States to ratify treaties relating to refugees (see article 22, page 305), the Committee recommends that countries ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Convention came into force in July 2003 (see box for countries that have ratified, as at July 2007). Its article 44 provides that contracting States should take measures "which they consider appropriate and which are within their powers to facilitate the reunion of migrant workers with their spouses, or with any persons having a relationship with them, which in accordance with the law is the equivalent of marriage, as well as their dependent or single children." Article 22 protects migrant workers from mass expulsion; article 14 protects them from "arbitrary or unlawful interference with his or her privacy, family, home..." ■

Right of child or parent to have any applications "to enter or leave a State Party for the purpose of family reunification" dealt with "in a positive, humane and expeditious manner" by the States Parties

"Positive"

When drafting this article some State representatives were concerned about the interpretation of the word "positive". Two alternatives were proposed – "objective" and "favourable" – and were rejected. "Favourable" was thought to contain too much of an element of prejudgement, whereas "positive", though stronger than "objective", did not assume that the State must agree to the application (E/CN.4/l989/48, pp. 37 to 40; Detrick, p. 206). Nonetheless, Japan took pains to enter a declaration that: "The Government of Japan declares further that the obligation to deal with applications to enter or leave a State Party for the purpose of family reunification 'in a positive, humane and expeditious manner' provided for in paragraph 1 of article 10 of the Convention on the Rights of the Child be interpreted not to affect the outcome of such applications." (CRC/C/2/Rev.8, p. 26) The Committee has twice recommended that Japan withdraws this declaration (Japan CRC/C/15/Add.231, para. 9).

Because many richer nations have increasingly in recent decades closed their borders to labour migration, family reunion has become the main legal entitlement for the settlement of immigrants. This, in turn, has led to increasingly restrictive conditions being placed on the right to family reunification. Some countries require nationality status before such rights can be secured. Many countries now require applicants to prove that there are sufficient resources to support the immigrant's family members without recourse to public funds. Other countries have stricter conditions for foreigners who themselves entered the country for family reunion when they were children. Not all States recognize 16- to 18-year-olds as children and some countries require children to be "dependent", or the exclusive responsibility of one parent if the parents are separated. The Committee expressed concern, for example, about Austria's "length of family reunification procedures and at the fact that it is restricted through the quota system and the age limit set for children at 15 years." (Austria CRC/C/15/Add.251, para. 35) And, while welcoming the fact that Estonia's National Court had found immigration quotas unconstitutional, the Committee remained concerned that Estonian law:

"... does not guarantee family reunification because it requires a dependent refugee spouse and dependent children outside Estonia to meet the criteria of the 1951 Refugee Convention even after the principal applicant has met the criteria. Further, the Committee is concerned that there are no legal provisions which make it possible for family members to reunite with a child who has been recognized as a refugee." *(Estonia CRC/C/15/Add.196, para. 34)*

The United Kingdom entered a blanket reservation to enable it to apply immigration legislation as it deems necessary (CRC/C/2/Rev.8, p. 42). The Committee expressed concern about this reservation, commenting that:

"... the reservation relating to the application of the Nationality and Immigration Act does not appear to be compatible with the principles and provisions of the Convention, including those of its articles 2,3,9 and 10".

The Committee suggested that the United Kingdom review its nationality and immigration laws and procedures to ensure their conformity with the principles and provisions of the Convention (United Kingdom CRC/C/15/Add.34, paras. 7 and 29). These concerns were reiterated in its observations on the United Kingdom's Second Report (CRC/C/15/Add.188, para. 6).

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The following States have ratified or acceded to the Convention (as at July 2007):

Albania
Algeria
Argentina
Azerbaijan
Belize
Bolivia
Bosnia and Herzegovina
Burkina Faso
Cape Verde
Chile
Colombia
Ecuador
Egypt
El Salvador
Ghana
Guatemala
Guinea
Honduras
Kyrgyzstan
Lesotho
Libyan Arab Jamahiriya
Mali
Mauritania
Mexico
Morocco
Nicaragua
Peru
Philippines
Senegal
Seychelles
Sri Lanka
Syrian Arab Republic
Tajikistan
Timor-Leste
Turkey
Uganda
Uruguay

Liechtenstein "reserves the right to apply the Liechtenstein legislation according to which family reunification for certain categories of foreigners is not guaranteed" (CRC/C/2/Rev.8, p. 28); this reservation was still in place at the examination of Liechtenstein's Second Report, to the Committee's regret (CRC/C/LIE/CO/2, para. 4), and Singapore reserved the right to apply its legislation relating to entry and stay in Singapore "as it may deem necessary from time to time" (CRC/C/2/Rev.8, p. 37), also a matter of concern to the Committee (Singapore CRC/C/15/Add.220, para. 6).

As discussed in the summary, the provisions of this article should apply to children whose parents are under threat of deportation. The Committee also expressed concern that in Norway:

"... the police may not be instructed to delay the expulsion of some members of the family in order to ensure that the whole family remains together and that undue strain on the children is avoided.
"... it is suggested that solutions should also be sought to avoid expulsions causing separation of families." *(Norway CRC/C/15/Add.23, paras. 11 and 24)*

While the Committee commended Norway's 'positive' efforts when responding to its Second Report, it was concerned that the best interests of children were not always taken into account when deportation decisions were made:

"The Committee is ... concerned that despite the State Party's positive efforts, when decisions to deport foreigners convicted of a criminal offence are taken, professional opinions on the impact of such decisions upon the children of the deported persons are not systematically referred to and taken into consideration.
"The Committee... recommends that the State Party review the process through which deportation decisions are made to ensure that where deportation will mean the separation of a child from his or her parent, the best interests of the child are taken into consideration." *(Norway CRC/C/15/Add.126, paras. 30 and 31)*

When it examined Norway's Third Report, the Committee reiterated this concern and again recommended Norway to

"... ensure that the best interests of the child are a primary consideration in the decisions taken regarding deportation of their parents." *(Norway CRC/C15/Add.263, para. 22)*

"Humane"

The word "humane" qualifies and strengthens the word "positive". For example, in cases where parents are illegal immigrants but their children have acquired the right to the host country's nationality, it is more humane to allow the family to remain in the country than to deport the parents – even though in both cases the family remains together.

The Committee raised concerns with Australia about discrimination against children travelling without documents:

"... that children who are granted a temporary protection visa (those arriving in the country without any travel document) do not have the right to family reunification...
"The Committee recommends that the State Party... consider permitting family reunification in cases where children or their family members are holders of temporary protection or temporary humanitarian visas..." (Australia CRC/C/15/Add.268, paras. 63 and 64)

The procedure for making the decision must also be humane. It is essential that immigration processes respect the dignity of the applicants, including the child's dignity. Treatment in detention centres can often be inhumane, as can the investigations by the authorities to authenticate the applications. The Committee has stressed the link between article 10 and article 37 (deprivation of liberty), pointing out that even where applicant children are housed in comfortable surroundings, such as hotels, they are still deprived of their liberty and their particular needs are not necessarily taken into account (see page 556). Children should not be subjected to investigations that could harm their health (such as bone X-rays to identify their age) or psychological well-being (such as traumatizing interrogations), nor should they be subjected to medical tests without their, or as appropriate, their parents' consent.

The Committee's General Comment No. 6 on "Treatment of unaccompanied and separated children outside their country of origin" emphasizes that securing family reunion should not endanger refugee children:

"Family reunification in the country of origin is not in the best interests of the child and should therefore not be pursued where there is a 'reasonable risk' that such a return would lead to the violation of fundamental human rights of the child... the granting of refugee status constitutes a legally binding obstacle to return to the country of origin and, consequently, to family reunification therein. Where the circumstances in the country of origin contain lower level risks and there is concern, for example, of the child being affected by the indiscriminate effects of generalized violence, such risks must be given full attention and balanced against other rights-based considerations, including the consequences of further separation. In this context, it must be recalled that the survival of the child is of paramount importance and a precondition for the enjoyment of any other rights.
"Whenever family reunification in the country of origin is not possible, irrespective of whether this is due to legal obstacles to return or whether the best-interests-based balancing test has decided against return, the obligations under articles 9 and 10 of the Convention come into effect and should govern the host country's decisions on family reunification therein." (Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, paras. 82 and 83)

"Expeditious"

All judicial and administrative processes concerning children need to be pursued as quickly as possible. Delay and uncertainty can be extremely prejudicial to children's healthy development. There is a sense in which any period of time is significantly 'longer' in the life of a child than in that of an adult. In immigration cases delays can ruin children's chances – for example some children pass the key age of 18 while still waiting for their application to be heard. The Committee expressed concern to Finland:

"While the Committee welcomes the considerable reduction in the time required for processing the applications of unaccompanied children, it is still concerned that the time needed for family reunification remains too long." (Finland CRC/C/15/Add.273, para. 49)

And it raised concern about delays in family reunification with Spain,

"... in particular for the issuance of the necessary visa and travel documents by the Ministry of Foreign Affairs." (Spain CRC/15/Add.185, para. 34)

In its Concluding Observations on Canada's Initial Report, the Committee expressed concern about the position of refugee and immigrant children:

"The Committee recognizes the efforts made by Canada for many years in accepting a large number of refugees and immigrants. Nevertheless, the Committee regrets that the principles of non-discrimination, of the best interests of the child and of the respect for the views of the child have not always been given adequate weight by administrative bodies dealing with the situation of refugee or immigrant children. It is particularly worried ... by the insufficient measures aimed at family reunification with a view to ensuring

that it is dealt with in a positive, humane and expeditious manner. The Committee specifically regrets the delays in dealing with reunification of the family in cases where one or more members of the family have been considered eligible for refugee status in Canada as well as cases where refugee or immigrant children born in Canada may be separated from their parents facing a deportation order."

The Committee recommended:

"... that the State Party pay particular attention to... the general principles of the Convention, in particular the best interests of the child and respect for his or her views, in all matters relating to the protection of refugee and immigrant children, including in deportation proceedings. The Committee suggests that every feasible measure be taken to facilitate and speed up the reunification of the family in cases where one or more members of the family have been considered eligible for refugee status in Canada. Solutions should also be sought to avoid expulsions causing the separation of families, in the spirit of article 9 of the Convention..." (Canada CRC/C/15/Add.37, paras. 13 and 24)

while the Committee noted that Canada, on its Second Report, had made some improvements to the situation of children in immigration procedures, its concerns about family reunification had not be met (Canada CRC/C/15/Add.215, para. 46; see also page 126).

The Committee also expressed concern over Germany's procedures and treatment of foreign children in need of family reunification:

"The Committee remains concerned about the extent to which account is taken of the special needs and rights of children in asylum-seeking and refugee situations. Procedures governing asylum-seeking children, particularly those relating to family reunification, expulsion of children to safe third countries and the 'airport regulation' give cause for concern. In this respect the Committee notes that the guarantees provided for in the Convention, in particular in its articles 2, 3, 12, 22 and 37(d) do not appear to be complied with, while insufficient attention seems to have been ensured to the implementation of articles 9 and 10 of the Convention...

"The Committee is of the opinion that the issue of asylum-seeking and refugee children deserves further study with a view to its reform in the light of the Convention and of the concerns expressed during the discussion with the Committee .."

And the Committee also encouraged the involvement of children in these proceedings (Germany CRC/C/15/Add.43, paras. 19, 33 and 29). ("Airport regulation" relates to provisions that penalize companies for allowing passengers to travel without proper visas or entry authorizations.) On Germany's Second Report the Committee was still concerned that its family reunification procedures were "complex and too long" (Germany CRC/C/15/Add.226, para. 54).

Right for such applications to entail "no adverse consequences" for any member of the family

This right relates to those countries where applications to enter or leave have resulted in the applicant or the applicant's family being persecuted or discriminated against. Such treatment is obviously a breach of human rights in all circumstances. The act of making an application should never put an applicant in jeopardy, even though the application may be turned down.

However, where asylum seeking occurs, the receiving State may unwittingly entail adverse consequences for the child or the child's family by making incautious enquiries; therefore care must be taken not to breach confidentiality in a hazardous manner (see article 22, page 316).

Right of child (save in exceptional circumstances) to maintain, on a regular basis, personal relations and direct contacts with both parents where the parents reside in different States

The Hague Convention on the Civil Aspects of International Child Abduction (1980) assists with realizing this right because it allows parents to enforce court orders for access (contact or visitation rights) in the Hague Convention States (see article 11, page 144). But not all parents with access problems in foreign countries have court orders, and only around a third of the world's countries have ratified or acceded to the Hague Convention. This right of the child should ensure that States give favourable consideration both to applications for access and applications for entry and exit in order to exercise access.

It is important not to assume that children with refugee status will never be able to return to their State of origin for family visits. Organizing a safe temporary visit may be possible. Evidence of children returning home for the purpose of temporary family reunification should not prejudice their refugee status.

Right of child and parents to leave any country (including their own), subject only to legal restrictions "which are necessary to protect national security, public order *(ordre public)*, public health or morals or the rights and freedoms of others and are consistent with the rights of this Convention"

This provision reflects the wording of article 12(2) of the International Covenant on Civil and Political Rights which provides: "Everyone shall be free to leave any country including his own." It was drafted at a time when a number of countries, including many of those in the sphere of the former USSR, unreasonably refused to allow citizens to leave the country. This is still the case in certain countries.

The French term *ordre public* is used in a number of international treaties; it is said to be more precise than "public order" (E/CN.4/1986/39, pp. 5 to 8; Detrick, p. 200) but it seems that there are now a variety of interpretations of *ordre public* across the world, some of which are more related to economic considerations than to the social ones normally understood by the phrase "public order".

Right of child and parent "to enter their own country"

This right is unqualified by any restrictions. An earlier draft of article 10 proposed that the child be given the right to "return" to his or her country, but this was changed to "enter" to accommodate those circumstances where children were born outside their State of nationality (E/CN.4/1986/39, pp. 5 to 8; Detrick, p. 201). Article 12(4) of the International Covenant on Civil and Political Rights is the source: "No one shall be arbitrarily deprived of the right to enter his own country."

The Human Rights Committee has issued a General Comment on freedom of movement, in which it notes, in relation to this right in the International Covenant on Civil and Political Rights: "The right of a person to enter his or her own country recognizes the special relationship of a person to that country. The right has various facets… The scope of 'his own country' is broader than the concept 'country of his nationality'. It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien…" (Human Rights Committee, General Comment No. 27, 1999, HRI/GEN/1/Rev.8, paras. 19 and 20, p. 217)

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 10, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 10 is relevant to **the departments of home affairs, foreign affairs, justice and social welfare**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 10 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 10 likely to include **the judiciary, immigration officers and social workers**)?

• Specific issues in implementing article 10

Are all applications by parents or children for entry to or exit from the country for the purposes of family reunification dealt with in a

- ☐ positive manner?
- ☐ humane manner?

- ☐ Are all such applications dealt with as quickly as possible?
- ☐ Are children and families involved in these applications treated with respect?
- ☐ Are requests by parents or children not to be deported dealt with in a positive and humane manner?
- ☐ Does the State recognize the right to family reunification of children who are resident in the country but do not have nationality status or official leave to remain?
- ☐ Are the views of children taken into account when decisions relating to family reunification are made?

How to use the checklist, *see page XIX*

article 10

- ☐ Are applicants and their family members protected from any adverse consequences from making a request to enter or leave the country for family reunification purposes?
- ☐ Are children permitted entry to the country and/or permission to leave the country in order to visit a parent?
- ☐ Are parents permitted entry to the country and/or permission to leave the country in order to visit a child?
- ☐ Subject to the limitations listed in article 10(2), are parents and children entitled to leave the country?
- ☐ Are parents and children always entitled to enter their own country?
- ☐ Has the State ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families?

Reminder: **The Convention is indivisible and its articles interdependent. Article 10 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is related to that of article 10 include:

Article 5: parental duties and rights and the child's evolving capacities
Article 7: right to know and be cared for by parents
Article 8: preservation of identity, including family relations
Article 9: non-separation from parents except when necessary for best interests
Article 11: protection from illicit transfer and non-return from abroad
Article 16: protection from arbitrary interference in privacy, family and home
Article 18: parents having joint responsibility
Article 22: refugee children
Article 35: prevention of sale, trafficking and abduction of children

Illicit transfer and non-return of children abroad

Text of Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Ratifying States have responsibilities under article 11 to prevent children from being wrongfully taken or from being retained outside their jurisdiction, to secure that these children are recovered and to undertake that abducted children brought into their jurisdiction are returned.

The article is primarily concerned with parental abductions or retentions. Though the article includes non-parents in its scope, it should be noted that article 35 covers the sale, trafficking and abduction of children, as does the new Optional Protocol to the Convention on the sale of children, child prostitution and child pornography. The difference between the two articles is not immediately clear, given that "illicit transfer and non-return of children abroad" is the same thing as "abduction" (even when the child is willing and no force is used). Broadly speaking, the distinction is, first, that article 11 applies to children taken for personal rather than financial gain, usually parents or other relatives, whereas "sale" and "trafficking" has a commercial or sexual motive. Second, article 11 is exclusively focused on children who are taken out of their country, whereas article 35 is not.

The *Manual on Human Rights Reporting,* 1997, observes that "children may be abducted by one of the parents and are usually not permitted to return home,... The situation often tends to permanently prevent the child from having access to the parent with whom the child used to live or with whom the child had direct and regular contacts and personal relations (see article 9, paragraph (3) and article 10, paragraph (2)). It also shows how important it is to be guided by the best interests of the child and in ensuring, as a general rule, that both parents continue to assume their responsibilities for the upbringing and development of the child, even when separation or divorce has intervened." (*Manual,* p. 451)

The article encourages States to conclude or become parties to multilateral agreements. Principal among these is the Hague Convention on the Civil Aspects of International Child Abduction. ■

Summary

States in which the Hague Convention on the Civil Aspects of International Child Abduction applies, as a result of ratification or accession (as at July 2007)

Albania, Argentina, Armenia, Australia, Austria, Bahamas, Belarus, Belgium, Belize, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China – Hong Kong Special Administrative Region only and Macau Special Administrative Region only, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Fiji, Finland, France, Georgia, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Moldova, Monaco, Montenegro, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Poland, Portugal, Romania, Saint Kitts and Nevis, San Marino, Serbia, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, The former Yugoslav Republic of Macedonia, Trinidad and Tobago, Turkey, Turkmenistan, Ukraine, United Kingdom, United States of America, Uruguay, Uzbekistan, Venezuela, Zimbabwe.

article 11

Measures to combat illicit transfer and non-return of children abroad

As article 11 acknowledges, a most effective means of implementing its provisions is to sign and implement the relevant international treaties, such as the Hague Convention on the Civil Aspects of International Child Abduction (1980). For example, the Committee expressed its deep concern to Algeria:

"... at the difficulty of implementing judicial decisions regarding custody and visitation rights for Algerian children with one parent living outside Algeria. It further expresses its concern that child abduction is particularly prevalent among children of mixed marriages. "The Committee recommends that the State Party undertake all necessary efforts to prevent and combat illicit transfer and non-return of children and to ensure proper and expeditious implementation of judicial decisions made with regard to custody and visiting rights. It further recommends that the State Party strengthen dialogue and consultation with relevant countries, notably those with which the State Party has signed an agreement regarding custody or visitation rights, and ratify the Hague Convention on Civil Aspects of International Child Abduction of 1980." (Algeria CRC/C/15/Add.269, paras. 48 and 49)

The Hague Convention is a global instrument. At the time of writing, a substantial number of countries have ratified the Convention (see box), although there is a significant absence of Middle Eastern and Far Eastern countries. Its provisions, in brief, protect children under the age of 16 who have been wrongfully (that is, in breach of someone's rights of custody) removed or retained abroad, if the Hague Convention is in force between the two countries involved. In these circumstances the court will normally order such children to be returned promptly to the place where they have habitual residence, when a final decision as to their future can be made. The courts may refuse to order this if the child objects or is at grave risk of harm or has been over a year in the new environment and is settled there – but the court's business is not to investigate the merits of the dispute itself. Each State Party to the Hague Convention has an administrative body called the Central Authority, whose function is to receive and transmit applications under the Convention.

In addition to the Hague Convention, there are regional treaties such as the Inter-American Convention on the International Return of Children, and the European Convention on the Recognition and Enforcement of Decisions Concerning Custody of Children. These can be helpful in augmenting the principles of the Hague Convention, for example by enforcing the details of existing court orders. Some countries have fully acceded to the Convention; others have entered into its provisions only in relation to specified countries. Even where States have not ratified, bilateral agreements can be concluded between two countries. The Committee observed to Mauritius:

"While noting the ratification and subsequent domestication by the State Party of the Hague Convention on Civil Aspects of International Child Abduction, the Committee is nevertheless concerned about the slow pace of the State Party's formal recognition of other countries as parties to the Convention when they have acceded to it, which hampers the effective implementation of the Convention in case of international abduction of children. "The Committee recommends that the State Party formally recognize every other State which has acceded to the same Hague Convention as party to that Convention in order

Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children

The following States have ratified the Convention (as at July 2007): Australia, Czech Republic, Hungary, Latvia, Monaco, Morocco, Slovakia, Slovenia

The following States have acceded to the Convention (as at July 2007): Albania, Armenia, Bulgaria, Ecuador, Estonia, Lithuania, Ukraine.

to provide immediate and effective protection for abducted children in accordance with the Hague Convention and with articles 11 and 3 of the Convention on the Rights of the Child." *(Mauritius CRC/C/MUS/CO/2, paras. 39 and 40)*

In addition, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children (1996) came into force in 2002 (see box). This Convention does not deal directly with parental abductions, but it does settle related matters such as who has parental responsibility and custody rights of children who have moved between countries, and which country has jurisdiction to act on behalf of these children (for example as between the country of the child's habitual residence and the child's country of nationality). The Committee has also encouraged States to ratify this Convention.

Beyond ratifying international treaties, and encouraging others States to ratify, a State should also take other measures to implement article 11. In particular, it should secure that:

- machinery is in place to speedily put checks on borders and to obtain appropriate court orders (for example, to withhold the child's passport) when it is suspected that a child is going to be abducted;
- parents are provided with legal aid and financial assistance when it is necessary to pay for the costs of the child's return;
- diplomatic and consular officials and the judiciary overseeing the law are fully acquainted with the principles of the Hague Convention;
- information is provided from government agencies and state databases to identify the whereabouts of abducted or wrongfully retained children.

For example, the Committee noted to Canada:

"The Committee notes with satisfaction that Canada is a party to the Hague Convention on the Civil Aspects of International Child Abduction of 1980 and notes the concern of the State Party that parental abductions of children are a growing problem.
"The Committee recommends that the State Party apply the Hague Convention to all children abducted to Canada, encourage States that are not yet party to the Hague Convention to ratify or accede to this treaty and, if necessary, conclude bilateral agreements to deal adequately with international child abduction. It further recommends that maximum assistance be provided through diplomatic and consular channels in order to resolve cases of illicit transfer and non-return in the best interests of the children involved." *(Canada CRC/C/15/Add.215, paras. 28 and 29)*

The Committee commended the fact that in Sweden

"... financial assistance is made available to cover the costs incurred by individuals when restoring illicitly transferred or non-returned children." *(Sweden CRC/C/15/Add.248, para. 27)*

And it recommended to Croatia

"... that professionals dealing with this kind of case receive adequate and ongoing training and that maximum assistance be provided through diplomatic and consular channels, in order to solve cases of illicit transfer." *(Croatia CRC/C/15/Add.243, para. 46)*

The Committee has been relatively silent on the failure of countries to become parties to the Hague Conventions and other regional treaties on abduction, though failure to do so could result in a breach of article 11 for the individual children concerned.

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 11, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 11 is relevant to **departments of home affairs, foreign affairs, justice, social welfare and social security**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole).

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 11 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 11 likely to include the **judiciary, social workers, border officials and the police**)?

• Specific issues in implementing article 11

- ☐ Has the State ratified the Hague Convention on the Civil Aspects of International Child Abduction?
- ☐ Has the State ratified the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children?
- ☐ Has the State ratified or acceded to any regional or bilateral agreements relating to child abduction?
- ☐ Is the judiciary fully acquainted with the Hague Conventions' provisions?
- ☐ Are effective methods in place to prevent a child from being abducted (e.g., border checks, court orders, confiscation of passports)?
- ☐ Are parents and children given financial assistance where necessary to exercise their rights under this article and any multilateral agreements?
- ☐ Are State institutions empowered to release information that will help trace the whereabouts of abducted children?

How to use the checklist, see page XIX

Reminder: **The Convention is indivisible and its articles interdependent. Article 11 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 11 include:

Article 5: parental duties and rights and the child's evolving capacities
Article 7: right to be cared for by parents
Article 8: right to preservation of nationality, including family relations
Article 9: non-separation from parents except when necessary for best interests; right to maintain contact with both parents on a regular basis
Article 10: right to family reunification
Article 16: protection from arbitrary interference in privacy, family and home
Article 18: parents having joint responsibility
Article 35: prevention of sale, trafficking and abduction of children
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

UNICEF/HQ97-0526/Murray-Lee

Respect for the views of the child

Text of Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The Committee on the Rights of the Child asserted early on that article 12 is a general principle of fundamental importance, relevant to all aspects of implementation of the Convention on the Rights of the Child and to the interpretation of all other articles.

Paragraph 1 requires States to assure

- that any child capable of forming a view has the right to express views freely in all matters affecting him or her;
- that the child's views are given due weight in accordance with
  - age and
  - maturity.

Paragraph 2 specifically provides the child with the right to be heard and have his or her views given due weight in any judicial and administrative proceedings affecting him or her. This covers a very wide range of court hearings and also formal decision-making affecting the child in, for example, education, health, planning, the environment and so on (see page 155 below).

The Committee has consistently emphasized that the child must be regarded as an active subject of rights and that a key purpose of the Convention is to emphasize that human rights extend to children. Article 12, together with the child's right to freedom of expression (article 13), and other civil rights to freedom of thought, conscience and religion (article 14), and freedom of association (article 15) underline children's status as individuals with fundamental human rights, and views and feelings of their own. The Committee has rejected what it termed "the charity mentality and paternalistic approaches" to children's issues. It invariably raises implementation of article 12 with States

Summary

Parties and identifies traditional practices, culture and attitudes as obstacles. In 2006, the Committee held a Day of General Discussion on "The right of the child to be heard" and resolved to adopt a General Comment (under preparation in 2007); its first 10 General Comments each interpret the implications of article 12 in particular contexts.

The rights of the child set out in the two paragraphs of article 12 do not provide a right to self-determination but concern involvement in decision-making. The references to the "evolving capacities" of the child, in articles 5 and 14 (pages 75 and 185) do emphasize the need to respect the child's developing capacity for decision-making.

Certain other articles include references to children's participation. Article 9(2) refers indirectly to the child's right to be heard in relation to proceedings involving separation from his or her parent(s), during which "all interested Parties shall be given an opportunity to participate in the proceedings and make their views known" (article 9, page 129). In relation to adoption proceedings, article 21(a) refers to "the informed consent" of the persons concerned (page 296). Every child deprived of his or her liberty has the right under article 37 to challenge the legality of the deprivation before a court or other authority, suggesting a right to initiate court action rather than just to be heard (page 557). And article 40, in relation to children "alleged as, accused of, or recognized as having infringed the penal law," emphasizes the juvenile's right to an active role in the proceedings, though he or she must not "be compelled to give testimony or to confess guilt" (article 40(2)(b)(iv), pages 614 and 615).

The Universal Declaration of Human Rights states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (article 19). And the International Covenant on Civil and Political Rights states: "Everyone shall have the right to hold opinions without interference" (article 19(1)). The significance of article 12 of the Convention on the Rights of the Child is that it not only requires that children should be assured the right to express their views freely, but also that they should be heard and that their views be given "due weight". ■

The child as a subject of rights and an active participant

In 2006, following its Day of General Discussion on "The right of the child to be heard", the Committee adopted detailed recommendations, with a preamble emphasizing that they were not exhaustive and indicating that it will shortly draft a General Comment on the interpretation of article 12, to highlight

"... its importance as a general principle as well as a substantive right and its linkages with other articles of the Convention on the Rights of the Child and in order to provide further guidance on the implementation of the Convention. The General Comment will explore in detail how the right should be implemented consistently in all settings."

In the preamble to the recommendations, the Committee states:

"The Committee considers that recognizing the right of the child to express views and to participate in various activities, according to her/his evolving capacities, is beneficial for the child, for the family, for the community, the school, the State, for democracy.
"To speak, to participate, to have their views taken into account: these three phases describe the sequence of the enjoyment of the right to participate from a functional point of view. The new and deeper meaning of this right is that it should establish a new social contract. One by which children are fully recognized as rights-holders who are not only entitled to receive protection but also have the right to participate in all matters affecting them, a right which can be considered as the symbol for their recognition as rights holders. This implies, in the long term, changes in political, social, institutional and cultural structures." (Committee on the Rights of the Child, Report on the forty-third session, September 2006, Day of General Discussion, Recommendations, Preamble. For full text, see www.ohchr.org/english/bodies/crc/discussion.htm.)

The Committee highlights traditional and cultural attitudes to children as the major obstacle to acceptance of the child as a holder of rights and to implementation of article 12 in States in all regions. It calls for promotion of a social climate conducive to child participation (Recommendations, para. 9).

The Committee very often pursues this in its Concluding Observations on States' reports. For example:

"The Committee notes with concern that, due to traditional and paternalistic attitudes still widespread in the country, children are not encouraged to express their views and that, in general, their views are not heard nor given due weight in decisions affecting them in the family, at school, in the community and in social life at large." (Chile CRC/C/15/ Add.173, para. 29)

"While welcoming the establishment of a Children's Parliament, the Committee is concerned that, owing to traditional attitudes,

respect for the views of the child remains limited within the family, in schools, in the courts before administrative authorities and in society at large…" (Burkina Faso CRC/C/15/Add.193, para. 26)

"The Committee welcomes the establishment of the Children's Parliament and the development of a model for Children's City Councils, but remains concerned that respect for the views of the child remains limited owing to traditional societal attitudes towards children on the part of schools, courts, administrative bodies and, especially, the family…" (Morocco CRC/C/15/Add.211, para. 30)

"The Committee welcomes initiatives to increase child participation by the establishment of children's councils, associations and projects in several states and districts, but remains concerned that traditional attitudes towards children in society, especially girls, still limit the respect for their views within the family, at school, in institutions and at the community government level…" (India CRC/C/15/Add.228, para. 36)

"While noting that articles 36 and 38 of the Algerian Constitution provide for freedom of opinion and expression, as well as for freedom of intellectual, artistic and scientific creation, the Committee is concerned that respect for the views of the child remains limited owing to traditional societal attitudes towards children within the family, schools and the community at large. The Committee notes with particular concern that the public exercise of freedom of opinion and expression by a child requires the authorization of his/her guardian." (Algeria CRC/C/15/Add.269, para. 33)

"While the Committee welcomes the efforts made by the State Party to promote respect for the views of the child, it is aware of a general attitude in society to pay little attention to children's views…" (Hungary CRC/C/HUN/CO/2, para. 24)

"… the Committee is of the view that children's right to free expression and to participation is still limited in the State Party, partly due to traditional attitudes." (United Republic of Tanzania CRC/C/TZA/CO/2, para. 29)

The *Manual on Human Rights Reporting*, 1997, comments: "This article sets one of the fundamental values of the Convention and probably also one of its basic challenges. In essence it affirms that the child is a fully fledged person having the right to express views in all matters affecting him or her, and having those views heard and given due weight. Thus the child has the right to participate in the decision-making process affecting his or her life, as well as to influence decisions taken in his or her regard...

"At the first sight it might be considered that article 12 is basically addressing the same reality as article 13 on freedom of expression and information. It is true that they are closely connected. But the fact they were both incorporated in the Convention and coexist in an autonomous manner, has to be interpreted as to mean that, while article 13 recognizes in a general way freedom of expression, article 12 should prevail in all those cases where the matters at stake affect the child, while stressing the right of the child to be heard and for the child's views to be taken into account." *(Manual*, p. 426)

In examining successive reports, the Committee persists in encouraging both law reform and public education and training to implement article 12. It encourages the development of children's organizations; the *Guidelines for Periodic Reports (Revised 2005)* asks States to provide data on the number of child and youth organizations or associations and the number of members they represent, and also on the number of schools with independent student councils (CRC/C/58/Rev.1, Annex, paras. 6 and 7). The Committee urges States to review implementation of article 12 and to consider what impact children's views are having on policy development. For example:

"The Committee recommends that further efforts be made to ensure the implementation of the principle of respect for the views of the child. Particular emphasis should be placed on the right of every child to express his or her views freely in all matters affecting him or her, the views of the child being given due weight in accordance with the age and maturity of the child in question. This general principle should also be reflected in all laws, judicial and administrative decisions, policies and programmes relating to children and should be implemented in the family, school, community and all institutions attended by and working with children." (Hungary CRC/C/HUN/CO/2, para. 25)

"In the light of article 12 of the Convention, the Committee recommends that the State Party:
(a) Strengthen its efforts to ensure that children have the right to express their views freely in all matters affecting them and to have those views given due weight in schools and other educational institutions, as well as in the family, and reduce the discrepancies in the opportunities for the participation of students from different social and regional backgrounds;
(b) Develop community-based skills-training programmes for parents, teachers and other

professionals working with and for children, to encourage children to express their informed views and opinions by providing them with proper information and guidance;
(c) Ensure that children be provided with the opportunity to be heard in any judicial and administrative proceeding affecting them, and that due weight be given to those views in accordance with the age and maturity of the child;
(d) Systematically ensure the effective participation of children's organizations in the development of national, regional and local policies or programmes affecting them, including educational reforms; and
(e) Provide more detailed information on this issue in the next periodic report." (Latvia CRC/C/LVA/CO/2, para. 25)

"In the light of article 12 of the Convention, the Committee recommends that the State Party:
(a) Strengthen its efforts to promote within the family, schools, and other institutions respect for the views of children, especially girls, and facilitate their participation in all matters affecting them;
(b) Amend the procedural civil codes to ensure that children are heard in judicial proceedings affecting them;
(c) Strengthen national awareness-raising campaigns to change traditional attitudes that limit children's right to participation;
(d) Regularly review the extent to which children participate in the development and evaluation of laws and policies affecting them, both at national and local levels, and evaluate the extent to which children's views are taken into consideration, including their impact on relevant policies and programmes." (Mexico CRC/C/MEX/CO/3, para. 28)

The Committee emphasizes that it is not enough that legislation should establish children's right to be heard and to have their views given due weight: children must be made aware of their right. Thus the Committee encouraged France to promote and facilitate respect for the views of children and their participation in all matters affecting them

"... as a right they are informed of, not merely a possibility". (France CRC/C/15/Add.240, para. 22)

It suggested to Iceland that children

"... are not adequately informed on how to contribute effectively, or how their input ... will be taken into consideration." (Iceland CRC/C/15/Add. 203, para. 26)

And to Belgium that

"... children are not adequately informed on how they can have input into policies that affect them, nor how their views will be taken into consideration once they have been solicited..." (Belgium CRC/C/15/Add.178, para. 21)

In the outcome document of the 2002 United Nations General Assembly's special session on children, *A World Fit for Children*, States commit themselves in its Declaration to: "Listen to children and ensure their participation. Children and adolescents are resourceful citizens capable of helping to build a better future for all. We must respect their right to express themselves and to participate in all matters affecting them, in accordance with their age and maturity." (Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, Declaration, para. 7.9) And the Plan of Action identifies children as key partners: "Children, including adolescents, must be enabled to exercise their right to express their views freely, according to their evolving capacity, and build self-esteem, acquire knowledge and skills, such as those for conflict resolution, decision-making and communication, to meet the challenges of life. The right of children, including adolescents, to express themselves freely must be respected and promoted and their views taken into account in all matters affecting them, the views of the child being given due weight in accordance with the age and maturity of the child. The energy and creativity of children and young people must be nurtured so that they can actively take part in shaping their environment, their societies and the world they will inherit. Disadvantaged and marginalized children, including adolescents in particular, need special attention and support to access basic services, build self-esteem and to prepare them to take responsibility for their own lives. We will strive to develop and implement programmes to promote meaningful participation by children, including adolescents, in decision-making processes, including in families and schools and at the local and national levels." (Plan of Action, A/S-27/19/Rev.1, para. 32(1))

Reservations

The Committee on the Rights of the Child has indicated concern about declarations and reservations that appear to challenge full recognition of the child as a subject of rights. In recommendations adopted following the Day of General Discussion on "The right of the child to be heard", the Committee

"... urges States Parties that have made reservations on the application of articles 12, 13, 14, 15 and 17 of the Convention to consider their withdrawal." (Committee on the Rights of the Child, Report on the forty-third session, September 2006, Day of General Discussion, Recommendations, para. 14)

For example, in ratifying the Convention, Poland made a declaration: "The Republic of Poland considers that a child's rights as defined in the Convention, in particular the rights defined in articles 12 to 16, shall be exercised with respect for parental authority, in accordance with Polish customs and traditions regarding the place of the child within and outside the family." (CRC/C/2/Rev.8, p. 36)

The Committee welcomed Poland's intention to review its declarations and reservations with a view to considering withdrawal. It went on to say:

"The Committee is concerned that traditional attitudes still prevailing in the country may not be conducive to the realization of the general principles of the Convention, including, in particular, article 2 (principle of non-discrimination), article 3 (principle of the best interests of the child) and article 12 (respect for the views of the child)." *(Poland CRC/C/15/Add.31, para. 12)*

When the Committee examined Poland's Second Report in 2002, it encouraged the State to "continue and complete" the process of withdrawing all of its reservations to and declarations on the Convention (Poland CRC/C/15/Add.194, paras. 9 and 10).

The child who is "capable of forming his or her own views": article 12(1)

Article 12 does not set any lower age limit on children's right to express views freely. It is clear that children can and do form views from a very early age, and the Convention on the Rights of the Child provides no support to those who would impose a lower age limit on the ascertainment or consideration of children's views. In its General Comment No. 7 on "Implementing child rights in early childhood", the Committee encourages States Parties to construct a positive agenda for rights in early childhood:

"A shift away from traditional beliefs that regard early childhood mainly as a period for the socialization of the immature human being towards mature adult status is required. The Convention requires that children, including the very youngest children, be respected as persons in their own right. Young children should be recognized as active members of families, communities and societies, with their own concerns, interests and points of view." *(Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 5)*

The *Manual on Human Rights Reporting*, 1997, states: "Pursuant to the provisions of this article, States Parties have a clear and precise obligation to assure to the child the right to have a say in situations that may affect him or her. The child should therefore not be envisaged as a passive human being or allowed to be deprived of such right of intervention, unless he or she would clearly be incapable of forming his or her views. This right should therefore be ensured and respected even in situations where the child would be able to form views and yet be unable to communicate them, or when the child is not yet fully mature or has not yet attained a particular older age, since his or her views are to be taken into consideration 'in accordance with the age and maturity of the child'..." (*Manual*, p. 426)

Some countries reported that they had set a minimum age on the right of the child to be heard, for example in custody proceedings following separation or divorce of parents, but the Convention provides no support for this, and States cannot quote the best interests principle to prevent children having an opportunity to express their views.

The Committee commented, for example, to Finland:

"The Committee expresses its concern that the views of children, in particular those below 12 years of age, are not always taken into full consideration, especially in child custody cases and access disputes taken to court.
"The Committee recommends that the State Party make sure that the views of children under 12 years of age who are affected by a judicial proceeding are always heard, if they are considered to be mature enough, and that this takes place in a child-friendly environment. It also recommends that the State Party undertake a regular review of the extent to which children's views are taken into consideration and of their impact on policy-making and court decisions, programme implementation and on children themselves." *(Finland CRC/C/15/Add.132, paras. 29 and 30)*

When it examined Finland's Third Report, it further noted:

"The Committee notes the information on the rules for hearing children in legal procedures, for example in custody or child protection measures, but it is concerned at the fact that only children aged 15 and older have the right to be heard directly by the judge/court. Below that age, it is left to the discretion of the judge whether to hear the child directly. When this is not done and the views of children are submitted to the court via a third party, sometimes this is done without the child being heard by that third party.
"The Committee recommends that the State Party take legislative and other measures to ensure that article 12 of the Convention is fully

implemented, in particular that the child has the right to express his/her views directly to the judge when decisions in judicial and/or administrative proceedings affecting the child have to be taken." (Finland CRC/C/15/Add.272, paras. 22 and 23)

It suggested that Lithuania should

"... effectively promote and encourage respect for the views of children below the age of 12 years, according to his/her evolving capacities;..." (Lithuania CRC/C/LTU/CO/2, para. 32 (c))

And it encouraged Albania to

"... provide educational information to parents, teachers and headmasters, government administrative officials, the judiciary, children themselves and society at large with a view to creating an encouraging atmosphere in which children, including those below the age of 10 years, can freely express their views, and where, in turn, these are given due weight." (Albania CRC/C/125/Add.249, para. 31)

The "right to express those views freely"

There are no boundaries on the obligation of States Parties to assure the child the right to express views freely. In particular, this emphasizes that there is no area of traditional parental or adult authority – the home or school for example – in which children's views have no place.

Respect for the views and feelings of the young child

"Article 12 states that the child has a right to express his or her views freely in all matters affecting the child, and to have them taken into account. This right reinforces the status of the young child as an active participant in the promotion, protection and monitoring of their rights. Respect for the young child's agency – as a participant in family, community and society – is frequently overlooked, or rejected as inappropriate on the grounds of age and immaturity. In many countries and regions, traditional beliefs have emphasized young children's need for training and socialization. They have been regarded as undeveloped, lacking even basic capacities for understanding, communicating and making choices. They have been powerless within their families, and often voiceless and invisible within society. The Committee wishes to emphasize that article 12 applies both to younger and to older children. As holders of rights, even the youngest children are entitled to express their views, which should be "given due weight in accordance with the age and maturity of the child" (art. 12.1). Young children are acutely sensitive to their surroundings and very rapidly acquire understanding of the people, places and routines in their lives, along with awareness of their own unique identity. They make choices and communicate their feelings, ideas and wishes in numerous ways, long before they are able to communicate through the conventions of spoken or written language. In this regard:

(a) The Committee encourages States Parties to take all appropriate measures to ensure that the concept of the child as rights holder with freedom to express views and the right to be consulted in matters that affect him or her is implemented from the earliest stage in ways appropriate to the child's capacities, best interests, and rights to protection from harmful experiences;

(b) The right to express views and feelings should be anchored in the child's daily life at home (including, when applicable, the extended family) and in his or her community; within the full range of early childhood health, care and education facilities, as well as in legal proceedings; and in the development of policies and services, including through research and consultations;

(c) States Parties should take all appropriate measures to promote the active involvement of parents, professionals and responsible authorities in the creation of opportunities for young children to progressively exercise their rights within their everyday activities in all relevant settings, including by providing training in the necessary skills. To achieve the right of participation requires adults to adopt a child-centred attitude, listening to young children and respecting their dignity and their individual points of view. It also requires adults to show patience and creativity by adapting their expectations to a young child's interests, levels of understanding and preferred ways of communicating."

(Extract from Committee on the Rights of the Child, General Comment No. 7, "Implementing child rights in early childhood", 2005, CRC/C/GC/7/Rev.1, para. 14. For summary, see article 18, page 242. For full text see www.ohchr.org/english/bodies/crc/comments.htm.)

In article 13 (see page 177), the right is re-stated and developed to include the right to "seek, receive and impart information and ideas of all kinds".

It should be emphasized that article 12 implies no obligation on the child to express views. "Freely" implies without either coercion or constraint: "The child has the right to express views **freely**. He or she should therefore not suffer any pressure, constraint or influence that might prevent such expression or indeed even require it." (*Manual on Human Rights Reporting*, 1997, p. 426)

"In all matters affecting the child"

There are few areas of family, community, regional, national or international decision-making that do not affect children. When the proposal to include the child's right to express views was first discussed in the Working Group drafting the Convention on the Rights of the Child, the text referred to the right of the child to "express his opinion in matters concerning his own person, and in particular marriage, choice of occupation, medical treatment, education and recreation". But most delegations felt that the matters on which States Parties should enable children to express opinions "should not be subject to the limits of a list, and therefore the list ought to be deleted" (E/CN.4/1349*, p. 3 and E/CN.4/L.1575, pp. 13 and 14; Detrick, pp. 224 and 225).

The reference to "all matters" shows that the participatory rights are not limited to matters specifically dealt with under the Convention. As the *Manual on Human Rights Reporting,* 1997, comments: "The right recognized in article 12 is to be assured in relation to **all matters** affecting the child. It should apply in all questions, even those that might not be specifically covered by the Convention, whenever those same questions have a particular interest for the child or may affect his or her life...

"The right of the child to express views therefore applies in relation to family matters, for instance in case of adoption, in school life, for instance when a decision of expulsion of the child is under consideration, or in relation to relevant events taking place at the community level, such as when a decision is taken on the location of playgrounds for children or the prevention of traffic accidents is being considered. The intention is therefore to ensure that the views of the child are a relevant factor in all decisions affecting him or her and to stress that no implementation system may be carried out and be effective without the intervention of children in the decisions affecting their lives." (*Manual*, pp. 426 and 427)

In its General Comment No. 5 on "General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)", the Committee notes that the principle of article 12,

"... which highlights the role of the child as an active participant in the promotion, protection and monitoring of his or her rights, applies equally to all measures adopted by States to implement the Convention." (CRC/GC/2003/5, para. 12. For more discussion of article 12 in relation to government and overall policy-making and in other settings, see page 162.)

"... the views of the child being given due weight in accordance with the age and maturity of the child"

These words provide an active obligation to listen to children's views and to take them seriously. Again, they are in accordance with the concept of the evolving capacities of the child, introduced in article 5. In deciding how much weight to give to a child's views in a particular matter, the twin criteria of age and maturity must be considered. Age on its own is not the criterion; the Convention on the Rights of the Child rejects specific age barriers to the significant participation of children in decision-making. Maturity is undefined; it implies the ability to understand and assess the implications of the matter in question. This in turn places obligations on the decision makers to give the child sufficient information.

"For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child": article 12(2)

When originally introduced during the drafting of the Convention on the Rights of the Child, the proposal that children should have a right to be heard in judicial and administrative proceedings was linked to the best interests principle, as the second paragraph of article 3, but it was then moved to take a more logical place with the overall participation principle in what was to become article 12 (E/CN.4/1989/48, pp. 42 to 45; Detrick, pp. 226 and 227).

The link between the paragraphs indicates that the second paragraph of article 12 applies to children "capable of forming views", again emphasizing that very young children should have the formal right to be heard. As already noted, the Convention provides no support for a set minimum age. For the child to be "provided the opportunity" implies an active obligation on the State

to offer the child the opportunity to be heard, although, again, it is important to emphasize that there is no requirement that the child express views. Also, "For this purpose…" means that courts and other proceedings must not just hear children's views, but also give them due weight having regard to age and maturity.

"Any judicial ... proceedings affecting the child" covers a very wide range of court hearings, including all civil proceedings such as divorce, custody, care and adoption proceedings, name-changing, judicial applications relating to place of residence, religion, education, disposal of money and so forth, judicial decision-making on nationality, immigration and refugee status, and criminal proceedings; it also covers States' involvement in international courts. Arguably, it covers criminal prosecutions of parents, the outcome of which can affect children dramatically.

The reference to "administrative proceedings" broadens the scope still further and certainly includes, for example, formal decision-making in education, health, planning and environmental decisions, social security, child protection, alternative care, employment and administration of juvenile justice.

In its General Comment No. 5 on "General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)", the Committee highlights that for rights to have meaning, effective remedies must be available to redress violations:

"This requirement is implicit in the Convention and consistently referred to in the other six major international human rights treaties. Children's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance." *(CRC/GC/2003/5, para. 24. See article 4, page 55.)*

The Committee addresses article 12(2) in detail in recommendations adopted following its Day of General Discussion on "The right of the child to be heard":

"The Committee reminds States Parties that the right of the child to be heard in judicial and administrative proceedings applies to all relevant settings without limitation, including children separated from their parents, custody and adoption cases, children in conflict with the law, children victims of physical violence, sexual abuse or other violent crimes, asylum-seeking and refugee children and children who have been the victims of armed conflict and in emergencies.

"The Committee affirms that all children involved in judicial and administrative proceedings must be informed in a child-friendly manner about their right to be heard, modalities of doing so and other aspects of the proceedings.

"The Committee advises States Parties to provide all relevant professional categories involved in judicial and administrative proceedings with mandatory training on the implications of article 12 of the Convention. Judges and other decision makers should, as a rule, explicitly state and explain the outcome of the proceedings, especially if the views of the child could not be accommodated….

"The Committee requests that States Parties establish specialized legal aid support systems in order to provide children involved in administrative and judicial proceedings with qualified support and assistance." *(Committee on the Rights of the Child, Report on the forty-third session, September 2006, Day of General Discussion, Recommendations, paras. 34 to 36 and 38)*

There is an increasingly recognized need to adapt courts and other formal decision-making bodies to enable children to participate. For court hearings this could include innovations such as more informality in the physical design of the court and the clothing of the judges and lawyers, the videotaping of evidence, sight screens, separate waiting rooms and the special preparation of child witnesses (see also article 19, page 269). In 2005, the Economic and Social Council of the United Nations adopted Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime. These reiterate children's right to participation and define "child sensitive" as an approach that "balances the child's right to protection and that takes into account the child's individual needs and views" (para. 9(d)). The Guidelines provides both principles and a framework "that could assist Member States in enhancing the protection of child victims and witnesses in the criminal justice system" (Economic and Social Council, resolution 2005/20, annex). The Committee draws States' attention to the Guidelines. For example, it expressed concern that in Thailand,

"... respect for the views of the child may not be fully taken into account in court processes involving children either as victims, witnesses or alleged offenders".

It recommended that Thailand should

"... improve child-sensitive court procedures"

in accordance with the Guidelines (Thailand CRC/C/THA/CO/2, paras. 29 and 30).

The Committee expresses concern when children, or children below a certain age, do not have unfettered access to the courts. In recommendations adopted following its Day of General Discussion on "The right of the child to be heard", the Committee states:

"The Committee affirms that age should not be a barrier to the child's right to participate fully in the justice process. In cases when States Parties have established a minimum age for the right of the child to be heard, measures should be taken to ensure that the views of the child below the minimum age be considered in accordance with the maturity of the child by specially trained social workers or other professionals.
"The Committee further notes that age should not be an impediment for the child to access complaints mechanisms within the justice system and administrative proceedings." *(Committee on the Rights of the Child, Report on the forty-third session, September 2006, Day of General Discussion, Recommendations, paras. 51 and 52)*

It frequently raises age barriers with States. For example:

"... the Committee remains concerned at inconsistencies in legislation as well as the fact that in practice, the interpretation of the legislation, and determination of which child is "capable of discernment", may leave possibilities of denying a child this right or make it subject to the child's own request and may give rise to discrimination. In addition, the Committee is concerned at the conclusion of the Special Rapporteur on the sale of children, child prostitution and child pornography that, in practice, most judges are not willing to hear children and that, in the past, justice has failed child victims of sexual abuse (E/CN.4/2004/9/Add.1, paras. 85 and 89).
"The Committee recommends that the State Party review legislation with a view to removing inconsistencies related to the respect for the views of the child." *(France CRC/C/15/Add.240, paras. 21 and 22)*

"The Committee notes with concern that in mainland China children are not able to file complaints in court or be consulted directly by the courts without parental consent, except in the case of children 16 years or older who earn their own livelihood...
"Furthermore, the Committee recommends that on the mainland the State Party review legislation affecting children with a view to ensuring that they are given the opportunity to be heard in any judicial and administrative proceeding affecting them, and that due weight is given to their views in accordance with the age and maturity of the child..." *(China CRC/C/CHN/CO/2, paras. 37 and 40)*

Similarly, the Committee noted in Belgium,

"With respect to court or administrative proceedings affecting the child,... the right to be heard is largely discretionary, ... , and is not adequately guaranteed to the child...
"The Committee recommends ... that legislation governing procedure in courts and administrative proceedings ensure that a child capable of forming his/her own views has the right to express those views and that they are given due weight." *(Belgium CRC/C/15/Add.178, paras. 21 and 22)*

In examining Chile's Second Report, the Committee noted with deep concern that

"... the juvenile judge may impose a protection measure on children without summoning them to appear when the case does not constitute a crime, ordinary offence or minor offence." *(Chile CRC/C/15/Add.173, para. 29)*

The Committee emphasizes that children's rights under article 12(2) apply equally to religious courts, telling Lebanon that it noted with concern that the religious and sharia courts decide on issues related to custody and care of the child without hearing the child's opinion. It recommended that Lebanon

"... continue to strengthen its efforts to promote respect for the views of all children and to facilitate their participation ... in judicial procedures, including procedures in the religious and sharia courts..." *(Lebanon CRC/C/LBN/CO/3, paras. 35 and 36)*

"either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law"

States are left with discretion as to how the child's views should be heard; but where procedural rules suggest that this be done through a representative or an appropriate body, the obligation is to transmit the views of the child. This principle should not be confused with the obligation in article 3 to ensure that the best interests of the child are a primary consideration in all actions concerning children.

During discussions in the Working Group drafting the Convention on the Rights of the Child, the explanation of the inclusion of the final qualification – "in a manner consistent with the procedural rules of national law" – was "that in case the hearing of the child's opinion required some international legal assistance, the requesting State's procedure should also be taken into account" (E/CN.4/1989/48, pp. 42 to 45; Detrick, p. 227).

The *Manual on Human Rights Reporting*, 1997, emphasizes: "The reference to 'procedural rules of

national law' is intended to stress the need for the national law to include specific procedures to allow for the implementation of the right as recognized by article 12, and naturally not to be interpreted as a means of allowing possible inadequate solutions contained in the procedural law to prevent the full enjoyment of this fundamental right. In fact, such an interpretation would again be contrary to article 4 of the Convention." (*Manual*, p. 429)

Complaints procedures. The Committee on the Rights of the Child sees the provision of effective complaints procedures for children as part of the implementation of article 12. Children need access to complaints procedures in all aspects of their lives – in the family, in alternative care, in schools and all other institutions, and in services and facilities relevant to them. The Committee frequently has expressed concern at the lack of complaints procedures for children and has encouraged States to develop 'child-friendly' complaints procedures:

"The Committee also expresses concern at the absence of an independent mechanism to register and address complaints from children concerning violations of their rights under the Convention. The Committee suggests that an independent child-friendly mechanism be made accessible to children to deal with complaints of violations of their rights and to provide remedies for such violations. The Committee further suggests that the State Party introduce an awareness-raising campaign to facilitate the effective use by children of such a mechanism." (Saint Kitts and Nevis CRC/C/15/Add.104, para. 13)

In promoting the development of independent human rights institutions for children – children's ombudspeople, commissioners and focal points on children's rights in human rights commissions – the Committee has encouraged them, where appropriate, to provide complaints procedures and also to review children's access to other complaints procedures (see article 4, page 55).

In the context of article 19, the Committee has recommended there should be complaints procedures for children suffering violence in and outside the family. The Committee has noted that children need to be able to complain independently of their parents:

"The Committee is concerned that, since children are able to lodge complaints only through their parents or legal guardians, the right to adequate recourse and complaint procedures for children victim of abuse, including sexual abuse, neglect or ill-treatment within their families does not seem to be secured...

"... the Committee recommends that a system of complaints aimed at children victims of any form of violence, abuse, including sexual abuse, neglect, maltreatment or exploitation, even while in the care of their parents, be established, as a means to ensure protection of and respect for their rights." (Ethiopia CRC/C/15/Add.67, paras. 16 and 31)

In its General Comment on "The rights of children with disabilities", the Committee notes the particular vulnerability to violence and neglect of children with disabilities, in the family and in institutions. It suggests that lack of access to a functional complaint-receiving, monitoring system is conducive to systematic and continuing abuse. The Committee urges States to ensure that all institutions providing care for children with disabilities should have an accessible and sensitive complaint mechanism (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, paras. 42 and 43).

Strategies for implementing participation rights

Participation rights to be reflected in domestic legislation

The Committee on the Rights of the Child underlines in its General Comment No. 5 on "General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)" that article 12, together with the other articles identified as general principles, should be incorporated into national laws and procedures (CRC/GC/2003/5, para. 12). To reflect both paragraphs of article 12 in domestic law requires provisions that uphold the right to participation in the informal arena of family life, in alternative care for children deprived of their family environment, in children's school and community life, and specifically in all formal judicial and administrative proceedings affecting the child.

In recommendations adopted following its Day of General Discussion on "The right of the child to be heard", the Committee urges States

"... to examine all existing laws and regulations with a view to ensure that article 12 is adequately integrated in all relevant domestic laws, regulations and administrative instructions." (Committee on the Rights of the Child, Report on the forty-third session, September 2006, Day of General Discussion, Recommendations, para. 42)

States' reports show that, increasingly, the principle of article 12 has been incorporated into domestic law, at least in relation to certain areas of children's lives and into certain court hearings.

The Committee continues to recommend that legal reform should reflect article 12. For example:

"In the light of article 12 of the Convention, the Committee is concerned that this general principle is not adequately reflected in the 1996 Rights of the Child Act..." (Armenia CRC/C/15/Add.119, para. 26)

The Committee has also emphasized that legal reform should be accompanied by awareness-raising and training:

"The Committee notes with appreciation that the State Party's domestic legislation has integrated provisions guaranteeing the participatory rights of children. However, it remains concerned that, in practice, these rights are not sufficiently implemented at the various levels of Costa Rican society. In the light of articles 12 to 17 and other related articles of the Convention, the Committee recommends that further efforts be made to ensure the implementation of the participatory rights of children, especially their rights to participate in the family, at school, within other institutions and in society in general. Awareness-raising among the public at large, as well as educational programmes on the implementation of these principles, should be reinforced in order to change traditional perceptions of children as objects and not as subjects of rights." (Costa Rica CRC/C/15/Add.117, para. 16)

It followed this up again following examination of Costa Rica's Third Report:

"The Committee notes with appreciation the State Party's many and various efforts to implement and promote the child's rights to express his/her views and to participate in decision-making processes and other activities regarding his/her position. But it also notes the State Party's concern that cultural problems are a factor which impedes the implementation of these rights in the family.

"The Committee recommends that the State Party undertake further and targeted measures to promote the child's rights to express his/her views freely within the family context and in institutions such as shelters and other institutions for children. The Committee further recommends that the State Party ensure that the child's view is taken into account in any proceedings dealing with child issues. The Committee further recommends that the media take into account the views of the child. Finally, the Committee recommends that the State Party take the necessary steps to promote awareness among children and adolescents of their participatory rights in the family, at school, within other institutions and in society in general through educational programmes on the implementation of these principles, and strengthen their opportunity to participate." (Costa Rica CRC/C/15/Add.266, paras. 21 and 22)

Right to information – a prerequisite for participation

As the *Manual on Human Rights Reporting*, 1997, makes clear "... the child should be provided with the necessary information about the possible existing options and the consequences arising therefrom. In fact, a decision can only be free once it is also an informed decision." (*Manual*, p. 426)

Article 13 asserts the child's freedom to "seek, receive and impart information and ideas of all kinds..." (see page 177). And, in addition, article 17 asserts the child's general right to information (see page 217). But in relation to the various decision-making arenas in which the child's views could be expressed – family, school, community, court and so on – there is an implied obligation to ensure that the child is appropriately informed about the circumstances and the options.

In recommendations adopted following its Day of General Discussion on "The right of the child to be heard", the Committee reaffirms the links between article 12 and article 13,

"... as the right to receive and impart information is an important pre-requisite to realize participation of children. The Committee urges States Parties to consider developing child-friendly information in relation to all matters affecting children." (Committee on the Rights of the Child, Report on the forty-third session, September 2006, Day of General Discussion, Recommendations, para. 12)

Participation rights without discrimination

In conjunction with the anti-discrimination principle in article 2 (page 17), article 12 emphasizes the equal right of all children to express views freely and have them taken seriously.

The need for special measures to combat potential discrimination in participation is highlighted in the recommendations adopted following the Committee's Day of General Discussion on "The right of the child to be heard":

"The Committee stresses that appropriate measures need to be undertaken in order to address discrimination of vulnerable or marginalized groups of children such as those affected by poverty or armed conflict, children without parental care, including children in institutions, children with disabilities, refugee and displaced children, street children and children belonging to indigenous and minority groups, in order for all children to enjoy the right enshrined in article 12...

"The Committee urges States Parties to pay special attention to the right of the girl child as sexist stereotypes and patriarchal values

undermine and place severe limitations on the enjoyment of the right set forth in article 12." *(Committee on the Rights of the Child, Report on the forty-third session, September 2006, Day of General Discussion, Recommendations, paras. 8 and 10)*

In comments on States' reports, the Committee has emphasized that children with varied social and regional backgrounds should be encouraged to participate, with special attention to vulnerable groups. The need to ensure the participation of indigenous children in the design, implementation and evaluation of strategies, policies and projects aimed at implementing their rights is stressed in the recommendations adopted following the Committee's Day of General Discussion on "The rights of indigenous children" (Report on the thirty-fourth session, September/October 2003, CRC/C/133, Recommendations, p. 134, para. 8).

The participation of children with disabilities without discrimination may require the production of materials in special media and the provision of special technology, interpreters (for example signing for deaf and partially hearing children) and special training, including of other children, parents and other family members, teachers and other adults. The Convention on the Rights of Persons with Disabilities, adopted in December 2006, requires (article 7(3)): "States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right." Article 21, on freedom of expression and opinion, and access to information, details measures that States should take to ensure that persons with disabilities can exercise these rights.

The Committee expands on this from the perspective of children in its General Comment No. 9 on "The rights of children with disabilities":

"More often than not, adults with and without disabilities make policies and decisions related to children with disabilities while the children themselves are left out of the process. It is essential that children with disabilities are heard in all procedures affecting them and that their views be respected in accordance with their evolving capacities. This should include their representation in various bodies such as parliament, committees and other forums where they voice views and participate in making the decisions that affect them as children in general and as children with disabilities specifically. Engaging them in such a process not only ensures that the policies are targeted to their needs and desires, it is also a valuable tool of inclusion since it ensures that the decision-making process is a participatory one. Children should be equipped with whatever mode of communication to facilitate expressing their views. Furthermore, States Parties should support the development of training for families and professionals on promoting and respecting the evolving capacities of children to take increasing responsibilities for decision-making in their own lives." *(Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, para. 15)*

The Platform for Action of the Fourth World Conference on Women states that: "Girls are less encouraged than boys to participate in and learn about the social, economic and political functioning of society, with the result that they are not offered the same opportunities as boys to take part in decision-making processes" (Fourth World Conference on Women, Beijing, 1995, Platform for Action, A/CONF.177/20/Rev.1, para. 265). This demands educational and other strategies to ensure girls have equal rights to participation and to respect for their views.

In 1997, the Committee on the Elimination of Discrimination against Women adopted a General Recommendation on political and public life. This emphasizes the importance of States taking all appropriate measures to eliminate discrimination against women in political and public life and provides detailed proposals (but surprisingly does not highlight the importance of promoting girls' participation rights, including in education) (Committee on the Elimination of Discrimination against Women, General Recommendation No. 23, 1997, HRI/GEN/1/Rev.8, p. 318).

Implementation not dependent on resources

The Committee on the Rights of the Child has emphasized that implementation of the general principles of the Convention, including article 12, cannot be dependent on resources. Article 4 of the Convention states that with regard to economic, social and cultural rights, States Parties shall undertake measures for implementation "to the maximum extent of available resources", accepting the inevitability of progressive implementation of these rights in some States. But this does not apply to civil and political rights including the obligations under article 12.

Education, training and other strategies to promote the child's participation

The Committee recognizes that legal frameworks alone, although essential, will not achieve

the necessary changes in attitudes and practice within families, schools or communities. So it has encouraged a variety of other strategies for implementation of article 12, including in particular education (proposing as a key strategy the incorporation of the Convention within the school curriculum) and information programmes, and systematic training of all those working with and for children.

In recommendations adopted following its Day of General Discussion on "The right of the child to be heard", the Committee reminds States Parties

"… of the need to provide training on the rights of the child to all public officials who influence government policy and implement programmes which involve children's issues in order to promote awareness of the rights of the child and the obligation of taking children's views into account." (Committee on the Rights of the Child, Report on the forty-third session, September 2006, Day of General Discussion, Recommendations, para. 29)

It also promotes parent education including on the rights of the child (para. 17) and teacher training to include participatory teaching methodologies (para. 24).

In Concluding Observations, the Committee frequently proposes comprehensive awareness-raising and public education. For example:

"The Committee recommends that the State Party develop a systematic approach to increasing public awareness of the participatory rights of children in the best interests of the child, particularly at the local levels and in traditional communities, with the involvement of community and village leaders, and ensure that the views of the child are heard and taken into consideration in accordance with their age and maturity in families, communities, schools, care institutions, and the judicial and administrative systems. In that regard, the Committee recommends that the State Party launch campaigns to change the traditional attitude and values which do not allow children to express their views." (Malawi CRC/C/15/Add.174, para. 30)

"In the light of article 12, the Committee recommends that the State Party:…
(c) Undertake campaigns to make children, parents, professionals working with and for children and the public at large aware that children have the right to be heard and to have their views taken seriously." (Argentina CRC/C/15/Add.187, para. 33)

"The Committee encourages the State Party to pursue its efforts:…
(b) To provide educational information to, among others, parents, teachers, government administrative officials, the judiciary, traditional leaders and society at large on children's rights to participate and to have their views taken into consideration…" (Burkina Faso CRC/C/15/Add.193, para. 27)

"The Committee recommends that the State Party:…
(b) Provide educational information to, among others, parents, teachers, government administrative officials, the judiciary, the Roman Catholic Church and other religious groups, and society at large, on children's right to have their views taken into account and to participate in matters affecting them." (Poland CRC/C/15/Add.184, para. 31)

"The Committee recommends that the State Party:…
(c) Develop skills-training programmes in community settings for parents, teachers, social workers and local officials to encourage children to express their informed views and opinions, and to have those views taken into consideration (e.g. using the brochure 'They who will inherit the land … cannot be heard')." (Iceland CRC/C/15/Add.203, para. 27)

Within the overall obligation under the Convention's article 42 to make the principles and provisions widely known by appropriate and active means to adults and children alike, the Committee on the Rights of the Child has stressed participatory rights and the importance of actively involving children themselves in strategies to fulfil article 42 (see page 627).

Monitoring implementation and impact

The Committee proposes that States should review the extent of implementation of article 12, which implies asking children themselves about the degree to which their views are heard and respected, including within the family. It has suggested that the work of children's parliaments and similar institutions should be evaluated to consider what impact they have on national policy (see below, page 163).

For example, the Committee urged Mexico to:

"… (d) Regularly review the extent to which children participate in the development and evaluation of laws and policies affecting them, both at national and local levels, and evaluate the extent to which children's views are taken into consideration, including their impact on relevant policies and programmes." (Mexico CRC/C/MEX/CO/3, para. 28)

Lithuania was recommended to:

"… (e) undertake a regular review of the extent to which children's views are taken into consideration and of the impact this has

on policy, programme implementation and on children themselves." (Lithuania CRC/C/LTU/CO/2, para. 32(e))

And Algeria was encouraged to:

"… undertake a regular review of the extent to which children's views are taken into consideration and of their impact on policy-making, court decisions and programme implementation…" (Algeria CRC/C/15/Add.269, para. 34)

Implementation in different settings

Within government, and in overall policy-making

The participation of children at all levels of policy-making has been encouraged by the Committee on the Rights of the Child. As the Committee notes in its General Comment No. 5 on "General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)":

"Article 12 of the Convention … requires due weight to be given to children's views in all matters affecting them, which plainly includes implementation of 'their' Convention." (CRC/GC/2003/5, para. 57)

For all States, this remains a relatively new challenge, with no real blueprints on how best to achieve meaningful participation, so experiment is needed.

In its General Comment, the Committee emphasizes that the development of a children's rights perspective throughout Government, parliament and the judiciary is required for effective implementation of the whole Convention, highlighting in particular the articles in the Convention identified by the Committee as general principles, including article 12:

"This principle, which highlights the role of the child as an active participant in the promotion, protection and monitoring of his or her rights, applies equally to all measures adopted by States to implement the Convention.

"Opening government decision-making processes to children is a positive challenge which the Committee finds States are increasingly responding to. Given that few States as yet have reduced the voting age below 18, there is all the more reason to ensure respect for the views of unenfranchised children in Government and parliament. If consultation is to be meaningful, documents as well as processes need to be made accessible. But appearing to 'listen' to children is relatively unchallenging; giving due weight to their views requires real change. Listening to children should not be seen as an end in itself, but rather as a means by which States make their interactions with children and their actions on behalf of children ever more sensitive to the implementation of children's rights.

"One-off or regular events like Children's Parliaments can be stimulating and raise general awareness. But article 12 requires consistent and ongoing arrangements. Involvement of and consultation with children must also avoid being tokenistic and aim to ascertain representative views. The emphasis on 'matters that affect them' in article 12(1) implies the ascertainment of the views of particular groups of children on particular issues – for example children who have experience of the juvenile justice system on proposals for law reform in that area, or adopted children and children in adoptive families on adoption law and policy. It is important that Governments develop a direct relationship with children, not simply one mediated through non-governmental organizations (NGOs) or human rights institutions. In the early years of the Convention, NGOs played a notable role in pioneering participatory approaches with children, but it is in the interests of both Governments and children to have appropriate direct contact." (Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, para. 12)

The Committee expands on children's participation in general measures of implementation in the recommendations adopted following its Day of General Discussion on "The right of the child to be heard". These include proposing that the permanent governmental body identified as having responsibility for children's rights should establish direct contact with children, as should national human rights institutions, and that children should be involved in planning, design, implementation and evaluation of national plans and in monitoring:

"… The Committee calls on States Parties to comply with their obligation to ensure that child participation is taken into account in resource allocation and that mechanisms to facilitate the participation of children be institutionalized as a tool for implementation.

"The Committee calls for States Parties to clearly designate which authority has the key responsibility in the implementation of children's rights and ensure that this entity establishes direct contact with child- and youth-led organizations in order to engage with them.

"The Committee recommends that independent national human rights institutions and/or children's ombudsmen or commissioners ensure that children are given easy access to raise their concerns and

that adequate resources are dedicated to involve children in their monitoring of the implementation of children's rights.
"The Committee recommends that children and youth be directly included in the planning, design, implementation and evaluation of National Plans of Action which relate to children's rights, in recognition of their role as core stakeholders in the process. Such an open consultation can ensure that National Plans of Action for the implementation of children's rights are fully relevant for children." *(Committee on the Rights of the Child, Report on the forty-third session, September 2006, Day of General Discussion, Recommendations, paras. 25 to 28)*

The Committee also proposes involvement of children in law reform and in promoting ratification of relevant international human rights instruments:

"The Committee notes the role that can be played by children in reviewing domestic legislation and advocating for legal reform in order to ensure that the principle of participation is adequately reflected in legislation, for example in the Family Code and the Criminal Code. In countries that have yet to adopt a Children's Code, the active promotion for legislative change by children themselves can play a catalysing role. Furthermore, organized youth participation can make important contributions to promotion of the ratification of international human rights instruments." *(Committee on the Rights of the Child, Report on the forty-third session, September 2006, Day of General Discussion, Recommendations, para. 32)*

The Committee has recommended formal structures for children's participation, including at national level. For example, it recommended that China should

"... consider establishing a standing body to represent children's views in the political process." *(China CRC/C/CHN/CO/2, para. 41)*

And it recommended that Tanzania should

"... formalize structures of participation for children and young people, and in particular ... provide support to the Junior Council, so that the Council can function effectively as the nationally representative body for children..." *(United Republic of Tanzania CRC/C/TZA/CO/2, para. 30)*

There are many possible forms of participation in policy development and the process of government: consultation with children as stakeholders, opinion polling among children, on-line consultation projects, child-citizen juries, standing advisory panels of children, questionnaires and so on.

In its General Comment No. 2 on "The role of independent national human rights institutions in the promotion and protection of the rights of the child", the Committee highlights the relevance of article 12:

"NHRIs [national human rights institutions] have a key role to play in promoting respect for the views of children in all matters affecting them, as articulated in article 12 of the Convention, by Government and throughout society. This general principle should be applied to the establishment, organization and activities of national human rights institutions. Institutions must ensure that they have direct contact with children and that children are appropriately involved and consulted. Children's councils, for example, could be created as advisory bodies for NHRIs to facilitate the participation of children in matters of concern to them.
"NHRIs should devise specially tailored consultation programmes and imaginative communication strategies to ensure full compliance with article 12 of the Convention. A range of suitable ways in which children can communicate with the institution should be established." *(Committee on the Rights of the Child, General Comment No. 2, 2002, CRC/GC/2002/2, paras. 16 and 17)*

Children's parliaments. The Committee has welcomed the establishment of children's parliaments as one participation strategy, but it has also noted that implementation of article 12 requires consistent and on-going, rather than one-off, events. So in recommendations adopted following its Day of General Discussion on "The right of the child to be heard", it urges States Parties

"... to move from an events-based approach of the right to participation to systematic inclusion in policy matters in order to ensure that children can express their views and effectively participate in all matters affecting them." *(Committee on the Rights of the Child, Report on the forty-third session, September 2006, Day of General Discussion, Recommendations, para. 25)*

The Committee goes on to note:

"The Committee recognizes as positive the step taken in numerous countries by the creation of child parliaments at national, regional and local levels, as such initiatives offer valuable insight of the democratic process and establish links between children and decision makers. The Committee however urges States Parties to establish clear guidelines on how the views presented by children in such forums are taken into account by the formal political process and policy-making and ensure that children are provided with adequate response in relation to their proposals." *(Recommendations, para. 30)*

It has emphasized that children's parliaments and similar structures should as far as possible be

representative, and it has encouraged evaluation of the impact of such bodies on policy development. For example, the Committee recommended that Togo should

"Evaluate and assess the functioning of the Children's Parliament and its impact on decision-making, and provide guidance and support for the continuation of its activities in a democratic manner..." (Togo CRC/C/15/Add.255, para. 33)

And it urged Greece, Gabon and Burkina Faso to:

article 12

"... Ensure that the Youth Parliament is representative of all sectors of the State Party's child population, including children from distinct ethnic, religious, linguistic or cultural groups." (Greece CRC/C/15/Add.170, para. 39(b))

"... Promote the activities and take duly into consideration the decisions of the Children's Parliament and take care that all groups of children are represented." (Gabon CRC/C/15/Add.171, para. 28; Burkina Faso CRC/C/15/Add.193, para. 27)

When the Committee examined Nigeria's Second Report, it noted with appreciation the high-level interministerial delegation sent by the State Party,

"... as well as the participation of the speaker of the Children's Parliament which gave a clearer understanding of the situation of children in the State Party." (Nigeria CRC/C/15/Add.257, para. 2)

Voting rights. The Committee has not as yet explored the relevance of article 12 to the voting age, set in most States at or above the age of majority. But it does note in its General Comment No. 5 on "General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)" (see above, page 162):

"Given that few States as yet have reduced the voting age below 18, there is all the more reason to ensure respect for the views of unenfranchised children in Government and parliament." (CRC/GC/2003/5, para. 12)

And following its Day of General Discussion on "The right of the child to be heard", the Committee recommends:

"... that States Parties take into account children's participation in the community at different levels and notes that in certain contexts apparent inconsistencies arise, such as when children below the age of 18 are subject to military service yet are not eligible to vote." (Committee on the Rights of the Child, Report on the forty-third session, September 2006, Day of General Discussion, Recommendations, para. 38)

A General Comment by the Human Rights Committee on the right to participate in public affairs, voting rights and the right of equal access to public service (article 25 of the International Covenant on Civil and Political Rights) does not directly consider the issue of voting age, merely stating that voting should be available to "every adult citizen". It states that: "Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria. For example, it may be reasonable to require a higher age for election or appointment to particular offices than for exercising the right to vote, which should be available to every adult citizen." (Human Rights Committee, General Comment No. 25, 1996, HRI/GEN/1/Rev.8, para. 4, p. 208)

In local government and services, including planning, housing, the environment

The Committee encourages participation of children in decision-making in local government and in the planning, implementation and monitoring of local services. In recommendations adopted following the General Discussion on "The right of the child to be heard", the Committee

"... calls on children to actively engage in local policy issues which relate to budget allocations for example in the areas of education, health, working conditions for youth and violence prevention." (Recommendations, para. 31)

The *Manual on Human Rights Reporting*, 1997, uses, as examples of implementation of article 12 at the community level, the involvement of children when decisions are being made about the location of playgrounds or the prevention of traffic accidents, and specifically refers to children's involvement in local councils. (*Manual*, p. 427)

The report of the Second United Nations Conference on Human Settlements (Habitat II) states that "Special attention needs to be paid to the participatory processes dealing with the shaping of cities, towns and neighbourhoods; this is in order to secure the living conditions of children and of youth and to make use of their insight, creativity and thoughts on the environment." (United Nations Conference on Human Settlements (Habitat II), A/CONF.165/14, p. 15)

The Committee has recommended, for example to Norway:

"The Committee commends the State Party for its efforts to respect the rights of children to have their views heard including, notably, through the appointment of child representatives at a municipal level. The Committee joins the State Party in expressing concern, however, that in practice children's views are insufficiently heard and taken into

consideration. The Committee is concerned that many children are not aware of their rights in this domain under the Convention and national laws, or of the opportunities which have been created for their views to be expressed.

"Taking note of the State Party's recent commitments, the Committee recommends that the State Party continue its efforts to inform children and others, including parents and legal professionals, of children's right to express their views and of the mechanisms and other opportunities which exist for this purpose. The Committee recommends, further, that the State Party undertake a regular review of the extent to which children's views are taken into consideration and of the impact this has on policy, programme implementation and on children themselves." *(Norway CRC/C/15/Add.126, paras. 24 and 25)*

In child protection

Article 19 of the Convention on the Rights of the Child sets out various measures for ensuring the protection of the child from all forms of violence and abuse. In each case, both before and during any protection measures and in the planning, implementation and monitoring of child protection systems, respect for the views of the child is vital. A legal obligation to ascertain children's views and give them due weight should be built into child protection legislation and applied to all decision-making (see article 19, page 249).

The Committee refers to the participation rights of child victims of violence in judicial proceedings in recommendations adopted following its Day of General Discussion on "The right of the child to be heard":

"The Committee thus urges States Parties to ensure that the views, needs and concerns of child victims who have suffered sexual abuse or other violent crimes be presented and considered in proceedings where their personal interests are affected. In addition to the rights outlined above for children in conflict with the law, States Parties should adopt and implement rules and proceedings for child victims of physical violence, sexual abuse or other violent crimes ensuring that repetition of testimonies be avoided by the use of video-taped interviews to reduce re-traumatization, that protective measures, health and psychosocial services be made available and that unnecessary contact with the perpetrator be avoided. The identity of the victim should be maintained confidential and, when required, the public and the media should be excluded from the courtroom during the proceedings." *(Committee on the Rights of the Child, Report on the forty-third session, September 2006, Day of General Discussion, Recommendations, para. 48)*

Access to an effective complaints procedure is an essential element of child protection, and because of the extent of parental violence and abuse of children, children require access which is independent of their parents (see above, page 158). The Committee has welcomed the development of free child helplines, enabling children to express concerns in confidence and seek advice and help (see, for example, Philippines CRC/C/15/Add.259, para. 31).

The Agenda for Action adopted at the First World Congress against Commercial Sexual Exploitation of Children (Stockholm, Sweden, 1996) includes a section encouraging participation, to:

"(a) promote the participation of children, including child victims, young people, their families, peers and others who are potential helpers of children so that they are able to express their views and to take action to prevent and protect children from commercial sexual exploitation and to assist child victims to be reintegrated into society; and

"(b) identify or establish and support networks of children and young people as advocates of child rights, and include children, according to their evolving capacity, in developing and implementing government and other programmes concerning them." (World Congress Plan of Action, A/51/385, para. 6. See also Yokohama Global Commitment 2001, page 526.)

The report of the United Nations Secretary-General's Study on Violence Against Children proposes, among key overarching recommendations, that States should "actively engage with children and respect their views in all aspects of prevention, response and monitoring of violence against them, taking into account article 12 of the Convention on the Rights of the Child. Children's organizations and child-led initiatives to address violence, guided by the best interests of the child, should be supported and encouraged." (Report of the independent expert for the United Nations study on violence against children, United Nations, General Assembly, sixty-first session, August 2006, A/61/299, para. 103. For further discussion, see article 19, page 251.)

Within the family environment

The Committee on the Rights of the Child has consistently encouraged children's participation in decision-making within the family, proposing that definitions of parents' and other caregivers' responsibilities should include an "article 12 obligation" to hear and take seriously the child's views. Among recommendations adopted following the Committee's Day of General Discussion on "The right of the child to be heard" are:

"The Committee recommends that States Parties further promote parent education on parenting and disseminate information to parents on the rights enshrined in the Convention and in particular of the right of the child to express his or her views, as they are of benefit to the whole family.
"The Committee encourages parents to support children in order to promote the realization of child participation at different levels in society.
"The Committee recognizes that a participatory family structure where the child can freely express views provides an important model to encourage child participation in the wider society. Furthermore, it plays a preventive role in the protection against domestic violence and abuse." *(Committee on the Rights of the Child, Report on the forty-third session, September 2006, Day of General Discussion, Recommendations, paras. 17 to 19)*

The rights of the child to a name and nationality and to preservation of identity (articles 7 and 8) require respect for the views of the child.

In October 1994, the Committee held a Day of General Discussion on "The role of the family in the promotion of the rights of the child". One of two main issues addressed was the civil rights and freedoms of the child within the family. In its preliminary conclusions adopted following the Discussion, the Committee stated:

"Traditionally, the child has been seen as a dependent, invisible and passive family member. Only recently has he or she become 'seen' and, furthermore, the movement is growing to give him or her the space to be heard and respected. Dialogue, negotiation, participation have come to the forefront of common action for children. The family becomes in turn the ideal framework for the first stage of the democratic experience for each and all of its individual members, including children. Is this only a dream or should it also be envisaged as a precise and challenging task?" *(Committee on the Rights of the Child, Report on the seventh session, September/October 1994, CRC/C/34, paras. 192 and 193)*

In adoption

Relating to adoption, article 12(2) requires that the child is heard in any judicial or administrative proceedings, and article 21(a) refers to the "informed consent" of persons concerned (see also article 21, page 296). The Committee highlights the obligation to ensure respect for the child's views in the adoption process and decisions in recommendations adopted following its Day of General Discussion on "The right of the child to be heard" (Recommendations, para. 44).

In custody decisions and alternative care

Article 20 sets out States' obligation to provide alternative care for children deprived temporarily or permanently of their family environment. The child's participative rights must be protected in all such settings – foster care, *kafalah* of Islamic law, and all kinds of institutions. The Committee's emphasis on the need for legislation and other strategies to reflect children's rights under article 12 applies equally to alternative care. In addition to the overall right to express views and have them taken seriously (article 12(1)), article 12(2) requires that the child is heard in any judicial or administrative proceedings relating to alternative care. Under article 9(2), in any proceedings to determine that it is necessary to separate a child from his or her parents, "all interested parties" must be given an opportunity to participate (see article 9, page 129). Under article 25, children placed by the State for care, protection or treatment must have a periodic review; under article 12, children should be permitted to participate in these reviews (see article 25, page 380).

The Committee referred to the right to respect for the views of the child in recommendations adopted following its Day of General Discussion on "Children without parental care":

"The Committee is concerned at the fact that children are not often heard in the separation and placement processes. It is also concerned that decision-making processes do not attach enough weight to children as partners even though these decision have a far-reaching impact on the child's life and future…
"In the light of article 12 of the Convention, the Committee recommends that all stakeholders continue and strengthen their efforts to take into consideration the views of the child and facilitate their participation in all matters affecting them within the evaluation, separation and placement process, in the out-of-home care and during the transition process. It recommends that children should be heard throughout the protection measure process, before making the decision, while it is implemented and also after its implementation. For this purpose, the Committee recommends establishment of a special mechanism which values children as partners. Family group conferencing is one model to ensure that the child's view is considered. It also recommends that States Parties undertake a regular review of the extent to which children's views are taken into consideration and of their impact on policy-making and court decisions and on programme implementation." *(Committee on the Rights of the Child, Report on the fortieth session, September 2005, CRC/C/153, paras. 663 and 664)*

The Committee often raises with States inadequate respect for children's views in decision-making processes concerning custody and access and alternative care placements. For example, it encouraged Poland to

"Establish procedures to ensure that children currently residing in institutions that are being closed down are fully informed and able to participate in deciding their future placement..." (Poland CRC/C/15/Add.184, para. 37(d))

In schools

In its first General Comment, issued in 2001, on "The aims of education", the Committee emphasizes that "children do not lose their human rights by virtue of passing through the school gates" and highlights the importance of schools respecting children's participation rights:

"... the article attaches importance to the process by which the right to education is to be promoted. Thus efforts to promote the enjoyment of other rights must not be undermined, and should be reinforced by the values imparted in the educational process. This includes not only the content of the curriculum but also the educational processes, the pedagogical methods and the environment within which education takes place, whether it be the home, school, or elsewhere. Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child, enables the child to express his or her views freely in accordance with article 12(1) and to participate in school life... Compliance with the values recognized in article 29(1) clearly requires that schools be child friendly in the fullest sense of that term and that they be consistent in all respects with the dignity of the child. Participation of children in school life, the creation of school communities and student councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realization of rights." (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 8)

The Committee reiterates this in recommendations adopted following its Day of General Discussion on "The right of the child to be heard", and continues:

"The Committee encourages the active consultation of children in the development and evaluation of school curricula, including in the development of methodology, as greater participation is conducive to increasing the involvement of children in the learning process. Child-centred education should be provided, taking into account due consideration for vulnerable children...

"The Committee reminds States Parties of their obligation to ensure that human rights education in general, and the CRC in particular, is included in the curricula in order to equip children with the fundamental knowledge tools to enhance the exercise of their rights. Students informed of their rights can also more effectively combat discrimination, violence and corporal punishment in schools. The Committee encourages States Parties to refer to the General Comment No. 8 on 'The Right of the Child to Protection from Corporal Punishment' for further guidance on participatory strategies to eliminate corporal punishment.

"The Committee calls on States Parties to provide teacher training on participatory teaching methodologies and its benefits and on paying special attention to the needs of vulnerable children, whose difficult situation may lead to them dropping out of schools. The children must enjoy special attention and be given the opportunity to express their views without intimidation." (Committee on the Rights of the Child, Report on the forty-third session, September 2006, Day of General Discussion, Recommendations, paras. 17 to 19)

Both paragraphs of article 12 are relevant: the general right of the child to express views freely "in all matters affecting the child", which covers all aspects of school life and decision-making about schooling; and the right to be heard in any "judicial and administrative proceedings affecting the child". For example, "administrative" proceedings might concern choice of school, exclusion from school, formal assessments and so on. There is a need for a legislative framework and procedures that provide for consultation with school students as a group, and also for ascertaining and paying due attention to the views of individual children concerning individual decisions on education.

The Committee has commended positive developments. For example:

"The Committee notes with satisfaction the functioning of a comprehensive pattern of student representation in the school system." (Austria CRC/C/5/Add.98, para. 5)

"The Committee appreciates the State Party's initiatives within the school environment. In this regard, it welcomes the coordination of an election for schoolchildren to choose the provisions of the Convention most significant to them..." (Belize CRC/C/15/Add.99, para. 4)

"... The Committee also notes with appreciation that the membership of school disciplinary councils includes children." (Mali CRC/C/15/Add.113, para. 5)

A particular issue, relevant to articles 12 and 13, is the right of children to organize and contribute to school newspapers and magazines (see article 13, page 177).

In child employment

In addition to protective legislation and procedures to prevent exploitation of children in employment (article 32, see page 479), under article 12, respect is required for the views of the child; in any judicial or administrative proceedings relating to employment of children, the child has a right to be heard. Children must also have access to complaints procedures relating to employment. However, one of the challenges of ending exploitation of child labour is to ensure that children's often sincere view that they should earn money and help to support the family is also heard and responded to.

The ILO Recommendation (No.190), supplementing the Worst Forms of Child Labour Convention, 1999 (No.182), emphasizes the importance of taking account of the views of children directly affected by the worst forms of child labour (see article 32, page 483).

In environmental protection and sustainable development

Article 29 requires that children's education be directed to "the development of respect for the natural environment"; article 24 requires that children are informed (see page 359) about environmental sanitation and it refers to the danger and risks of environmental pollution (see page 358).

The direct participation of children was highlighted by the 1992 Earth Summit. The United Nations Conference on Environment and Development produced the Rio Declaration on Environment and Development, in which Principle 21 states: "The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all." The section of Agenda 21 on "Children and youth in sustainable development" emphasizes that children and youth should participate actively in all relevant decision-making processes, because these processes affect their lives today and have implications for their futures. The objectives include that "Each country should, in consultation with its youth communities, establish a process to promote dialogue between the youth community and Government at all levels, and to establish mechanisms that permit youth access to information and provide them with the opportunity to present their perspectives on government decisions, including the implementation of Agenda 21... Each country and the United Nations should support the promotion and creation of mechanisms to involve youth representation in all United Nations processes in order to influence those processes.

"Children not only will inherit the responsibility of looking after the Earth, but in many developing countries they comprise nearly half the population. Furthermore, children in both developing and industrialized countries are highly vulnerable to the effects of environmental degradation. They are also highly aware supporters of environmental thinking. The specific interests of children need to be taken fully into account in the participatory process on environment and development in order to safeguard the future sustainability of any actions taken to improve the environment..."

Among activities, Governments should take active steps to "Establish procedures to incorporate children's concerns into all relevant policies and strategies for environment and development at the local, regional and national levels, including those concerning allocation of and entitlement to natural resources, housing and recreation needs, and control of pollution and toxicity in both rural and urban areas." (Agenda 21, chapter 25, Objectives)

In individual health decisions and the planning and provision of health services

The Convention upholds children's rights to participate in decisions about their health and health care, and also in the planning and provision of health services relevant to them (see also article 1, page 7, and article 24, page 355). One aspect of this is children's evolving capacity to determine their own health care. In its General Comment No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child", the Committee first asserts States' general obligation:

"To ensure that adolescent girls and boys have the opportunity to participate actively in planning and programming for their own health and development..." *(CRC/GC/2003/4, para. 39(d))*

It goes on to address rights to consent to treatment:

"Before parents give their consent, adolescents need to have a chance to express their views freely and their views should be given due weight, in accordance with article 12 of the Convention. However, if the adolescent is of sufficient maturity, informed consent shall be obtained from the adolescent her/himself, while informing the parents if that is in the 'best interest of the child' (art. 3).

"With regard to privacy and confidentiality, and the related issue of informed consent to treatment, States Parties should (a) enact laws or regulations to ensure that confidential advice concerning treatment is provided to adolescents so that they can give their informed consent. Such laws or regulations should stipulate an age for this process, or refer to the evolving capacity of the child; and (b) provide training for health personnel on the rights of adolescents to privacy and confidentiality, to be informed about planned treatment and to give their informed consent to treatment." (Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, paras. 32 and 33)

Some countries have set an age from which children are deemed to be able to consent to medical treatment for themselves; in other countries, more in line with the concept of evolving capacities of the child, no age is set but a principle exists that the child acquires the right to make decisions for himself or herself once judged to have "sufficient understanding". In some instances it is linked to a presumption in law that a child of a certain age does have sufficient maturity (see also article 1, page 7).

The Committee also addresses participation rights of children in its General Comment No. 3 on "HIV/AIDS and the rights of the child":

"Children are rights holders and have a right to participate, in accordance with their evolving capacities, in raising awareness by speaking out about the impact of HIV/AIDS on their lives and in the development of HIV/AIDS policies and programmes. Interventions have been found to benefit children most when they are actively involved in assessing needs, devising solutions, shaping strategies and carrying them out rather than being seen as objects for whom decisions are made. In this regard, the participation of children as peer educators, both within and outside schools, should be actively promoted. States, international agencies and non-governmental organizations must provide children with a supportive and enabling environment to carry out their own initiatives, and to fully participate at both community and national levels in HIV policy and programme conceptualization, design, implementation, coordination, monitoring and review. A variety of approaches are likely to be necessary to ensure the participation of children from all sectors of society, including mechanisms which encourage children, consistent with their evolving capacities, to express their views, have them heard and given due weight in accordance with their age and maturity (art. 12, para. 1). Where appropriate, the involvement of children living with HIV/AIDS in raising awareness, by sharing their experiences with their peers and others, is critical both to effective prevention and to reducing stigmatization and discrimination. States Parties must ensure that children who participate in these awareness-raising efforts do so voluntarily, after being counselled, and that they receive both the social support and legal protection to allow them to lead normal lives during and after their involvement." (Committee on the Rights of the Child, General Comment No. 3, 2003, CRC/GC/2003/3, para. 12)

In the media

One recommendation adopted following the Day of General Discussion on "The right of the child to be heard", refers to the contribution of the media:

"The Committee recognizes the essential role played by media in promoting awareness of the right of children to express their views and urges various forms of media, such as radio and television, to dedicate further resources to including children in the development of programmes and allowing for children to develop and lead media initiatives on their rights." (Committee on the Rights of the Child, Report on the forty-third session, September 2006, Day of General Discussion, Recommendations, para. 36)

In the outline for its Day of General Discussion on "The child and the media", the Committee on the Rights of the Child emphasized the importance of the media in offering children the opportunity to express themselves (see also article 17, page 218):

"One of the principles of the Convention is that the views of children be heard and given due respect (art. 12). This is also reflected in articles about freedom of expression, thought, conscience and religion (arts. 13 and 14). It is in the spirit of these provisions that children should not only be able to consume information material but also to participate themselves in the media. This requires that there exist media which communicate with children. The Committee on the Rights of the Child has noted that there have been experiments in several countries to develop child-oriented media; some daily newspapers have special pages for children and radio and television programmes also devote special segments for the young audience. Further efforts are, however, needed..." (Committee on the Rights of the Child, Report on the eleventh session, January 1996, CRC/C/50, Annex IX, p. 81)

In asylum-seeking and other immigration procedures

The principles of article 12(1) and (2) should be applied in all immigration procedures including asylum seeking, in relation to articles 10 and 22.

In its General Comment on "Treatment of unaccompanied and separated children outside their country of origin", the Committee comments:

"Pursuant to article 12 of the Convention, in determining the measures to be adopted with regard to unaccompanied or separated children, the child's views and wishes should be elicited and taken into account (art. 12(1)). To allow for a well-informed expression of such views and wishes, it is imperative that such children are provided with all relevant information concerning, for example, their entitlements, services available including means of communication, the asylum process, family tracing and the situation in their country of origin (arts. 13, 17 and 22(2)). In guardianship, care and accommodation arrangements, and legal representation, children's views should also be taken into account. Such information must be provided in a manner that is appropriate to the maturity and level of understanding of each child. As participation is dependent on reliable communication, where necessary, interpreters should be made available at all stages of the procedure." (Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, para. 25)

The 1994 *Refugee children – Guidelines on Protection and Care*, published by the Office of the United Nations High Commissioner for Refugees (UNHCR), emphasizes the importance of the Convention's general principles: non-discrimination, best interests of the child and respect for the views of the child (articles 2, 3 and 12). The *Guidelines* underlines the importance of seeking and taking seriously children's views and feelings, and enabling children to take part in decisions related to asylum seeking and as refugees (*Refugee children – Guidelines on Protection and Care*, UNHCR, Geneva, 1994, pp. 23 *et seq.*). The UNHCR policy on refugee children states: "... Although vulnerable, children are also a resource with much to offer. The potential contributions of children must not be overlooked. They are people in their own right, with suggestions, opinions and abilities to participate in decisions and activities that affect their lives. Efforts on behalf of refugee children fall short if they are perceived only as individuals to be fed, immunized or sheltered, rather than treated as participating members of their community." (UNHCR Executive Committee Document EC/SCP/82 in *Guidelines*, p. 171)

In the juvenile justice system

In addition to the general principles found in article 12(1) and (2), articles 37 and 40 require legislation and other measures to ensure the child's participation in relation to involvement in the juvenile justice system. Under article 37(d), any child deprived of liberty has the right to prompt access to legal and other assistance as well as the right to challenge the legality of the deprivation of liberty before a court or other competent body (see article 37, page 565). And under article 40(2)(b), the child alleged as or accused of infringing the penal law has similar rights to legal and other assistance and to participate in a fair hearing, if necessary with the assistance of an interpreter (see article 40, page 613).

In its General Comment No. 10 on "Children's rights in Juvenile Justice", the Committee highlights that the child's article 12 rights should be fully respected and implemented throughout every stage of the process of juvenile justice:

"The Committee notes that increasingly the voices of children involved in the juvenile justice system are becoming a powerful force for improvements and reform, and for the fulfilment of rights."

The Committee goes on to comment on the obligations of the second paragraph of article 12:

"It is obvious that for a child alleged as, accused of or recognized as having infringed the penal law, the right to be heard is fundamental for a fair trial. It is equally obvious that the child has the right to be heard directly and not only through a representative or an appropriate body if it is in her/his best interests. This right of the child must be fully observed in all stages of the process, starting with pre-trial stage when the child has the right to remain silent, as well as the right to be heard by the police, the prosecutor and the investigating judge. But it also applies in the stage of adjudication and disposition, and in the stage of implementation of the imposed measures.

"... the child, in order to effectively participate in the proceedings, must be informed not only about the charges, but also about the juvenile justice process as such and about the possible measures. The child should be given the opportunity to express his/her views concerning the (alternative) measures that may be imposed, and the specific wishes or preferences he/she may have in this regard should be given due weight. Alleging that the child is criminally responsible implies that he/she should be competent and able to effectively participate in the decisions regarding the most appropriate response to allegations of his/her infringement of the penal law. It may go without saying that the judges involved are responsible for and make the decisions. But to treat the child as a passive object does not recognize his/her rights or contribute to an effective response to his/her behaviour. This also applies to the implementation of the measure imposed.

Research shows that an active engagement of the child in this implementation will in most cases contribute to a positive result…" *(Committee on the Rights of the Child, General Comment No. 10, 2007, CRC/C/GC/10, paras. 4(d) and 23)*

In recommendations adopted following its Day of General Discussion on "The right of the child to be heard", the Committee refers to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules") which provides (para. 14(2)) that "proceedings shall be conducted in an atmosphere of understanding which shall allow the juvenile to participate therein and to express herself or himself freely". It also refers to the United Nations Guidelines for the Prevention of Juvenile Delinquency, the Riyadh Guidelines, which in particular emphasizes the importance of participation in prevention as well as planning and implementation: "For the purposes of the interpretation of these guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control" (para. 3). The Guidelines goes on to propose active participation in delinquency prevention policies and processes, and strengthened youth organizations given full participatory status in the management of community affairs (for details, see article 40, page 601).

The Committee reminds States Parties that, in order to ensure that the views of the children in conflict with the law are duly taken into account, the following must be provided as a minimum in order to ensure their participation in accordance with articles 12 and 40 of the Convention:

"… (a) adequate legal or other appropriate assistance;
(b) free access to an interpreter if the child cannot speak or understand the language used;
(c) respect for his or her privacy during all stages of the proceedings;
(d) recognition that the child has a right to participate freely and cannot be compelled to give testimony." *(Committee on the Rights of the Child, Report on the forty-third session, September 2006, Day of General Discussion, Recommendations, para. 48)*

In the work of the Committee and the reporting process under the Convention

In recommendations adopted following its Day of General Discussion on "The right of the child to be heard", the Committee

"… recognizes the importance of child participation in the work of the Committee and encourages children and youth representatives to submit information in the context of periodic reviews and stresses in particular their important role in advocating for and monitoring of the implementation of the concluding observations at the national level. "The Committee remains committed to exploring means of furthering participation of children in the work of the Committee, and in particular encourages more participation of children during pre-session country briefings with civil society representatives." *(Committee on the Rights of the Child, Report on the forty-third session, September 2006, Day of General Discussion, Recommendations, paras. 57 and 58)*

This was in response to proposals from children, who participated in the General Discussion, that there should be a child member of the Committee, an advisory group of children to work with the Committee and more direct contact with children in all aspects of its work.

In the recommendations, the Committee proposes that States Parties

"… actively involve children in the periodic review process of the Convention. It also urges children to play an active role in identifying human rights aspects in need of further attention and monitoring the implementation of concluding observations at the national level." *(Recommendations, para. 31)*

The Committee also proposes that non-governmental organizations, including national alliances on children's rights, should engage directly with children in the process of "parallel reporting" under the Convention. And the Committee encourages the presence of children during pre-sessional country briefings with the Committee (Recommendations, para. 34).

article 12

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 12, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (**all departments affecting children directly or indirectly**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole).

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 12 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 12 should include training for **all those working with or for children, and parenting education**)?

• Specific issues in implementing article 12

Is the obligation reflected in article 12(1) respected

- ☐ in arrangements for the overall implementation of the Convention?
- ☐ in arrangements for preparing the State's Initial and Periodic Reports under the Convention?

in arrangements for the development of legislation, policy and practice which may affect children

- ☐ in central government?
- ☐ in regional/provincial government?
- ☐ in local government?

Is an obligation to respect article 12(1) included in legislation applying to

- ☐ the child in the family environment?
- ☐ the process of adoption and adopted children?
- ☐ placement in alternative care and to the child in alternative care, whether provided by the State or by others?

How to use the checklist, *see page XIX*

- ☐ all schools and other educational institutions and all educational services affecting children?
- ☐ child protection?
- ☐ health services and institutions?
- ☐ local communities, planning and environmental decision-making affecting children, including in response to the proposals of Agenda 21?
- ☐ child employment and vocational training or guidance?
- ☐ all immigration procedures, including those affecting asylum-seeking children?
- ☐ the child in the juvenile justice system?

☐ Where age limits apply to the laws providing children with an opportunity to express their views and requiring that their views are given due weight, are the limits in accordance with article 12 and other articles ?

☐ Are the rights reflected in article 12 available to all children concerned, including children with disabilities, without discrimination, where necessary through the provision of interpreters, translations, special materials and technology?

☐ Have the implications for policy and practice of the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime been appropriately considered?

☐ Have special arrangements been developed for child witnesses in both civil and criminal proceedings?

☐ Has there been adaptation to enable children's participation, for example by not using intimidatory and confusing language, and by providing appropriate settings and procedures to enable children to be heard?

Are there no situations in which a child is compelled to

- ☐ express views?
- ☐ give evidence in court or other proceedings?

☐ Does the child in each case have access to adequate information to enable him or her to express informed views and/or to play an informed role in decision-making?

Has the State ensured that there are no matters affecting the child on which the child is, through legislation or otherwise, excluded from

- ☐ expressing views?
- ☐ having those views given due weight?

In relation to paragraph 2 of article 12, are children provided with a right to be heard in all judicial or administrative proceedings affecting them, such as

- ☐ criminal proceedings?
- ☐ civil proceedings?
- ☐ education?

How to use the checklist, *see page XIX*

- ☐ health?
- ☐ child protection?
- ☐ placement in alternative care?
- ☐ adoption proceedings?
- ☐ reviews under article 25?
- ☐ immigration and asylum seeking?
- ☐ planning, housing and environment?
- ☐ social security?
- ☐ employment?
- ☐ any other?

☐ Has the implementation and use of legislative provisions relating to children's participation been monitored?

☐ Do children have appropriate remedies for breaches of their rights guaranteed by article 12?

Do children have appropriate access to effective independent complaints procedures in relation to

- ☐ family life, including ill-treatment?
- ☐ alternative care of all kinds?
- ☐ schools and education services?
- ☐ health services and institutions?
- ☐ employment?
- ☐ all forms of detention?
- ☐ all aspects of the juvenile justice system?
- ☐ environmental, planning, housing and transport issues?
- ☐ other services affecting children?

☐ In each case, do children have access to appropriate advice and advocacy?

Do children have appropriate access to the media and opportunities to participate in the media, particularly

- ☐ radio?
- ☐ print media?
- ☐ television?

☐ Do children have opportunities for training in media skills enabling them to relate to and use the media in a participatory manner?

☐ Are the participatory rights of children within the family promoted through parenting education and preparation for parenthood?

How to use the checklist, *see page XIX*

Is training to promote the participatory rights of children provided for

- ☐ judges, including family court and juvenile court judges?
- ☐ probation officers?
- ☐ police officers?
- ☐ prison officers?
- ☐ immigration officers?
- ☐ teachers?
- ☐ health workers?
- ☐ social workers?
- ☐ other professionals?

Reminder: **The Convention is indivisible and its articles interdependent. Article 12 has been identified by the Committee on the Rights of the Child as a general principle of relevance to implementation of the whole Convention.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development

All other articles require consideration of the child's right to be heard, and to have his or her views taken seriously. Specifically, the child has a right to be heard in relation to any judicial or administrative proceedings affecting the child, relevant to, for example, articles 9, 10, 21, 25, 37, 40. Also linked to the child's participation rights are articles 13 (freedom of expression), article 14 (freedom of thought, conscience and religion) and article 15 (freedom of association).

UNICEF/HQ-99-0243/Horner

Child's right to freedom of expression

Text of Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

*(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.*

This is one of a series of articles in the Convention on the Rights of the Child which confirm that civil rights guaranteed for "everyone" in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights do apply to children. The first paragraph sets out the right to freedom of expression – to "seek, receive and impart" information and ideas of all kinds, and the second paragraph limits the restrictions that may be applied to the child's exercise of this right.

The right to freedom of expression is closely linked to the child's right to express views and have them taken seriously under article 12, and to the following two articles: on freedom of thought, conscience and religion and on freedom of association. In addition, article 17 covers the child's access to appropriate information and material. In its examination of reports, the Committee on the Rights of the Child has emphasized that the child is the subject of rights, the possessor of rights, and that the civil rights of children should be recognized explicitly in the law. Article 30 asserts the linked cultural, religious and linguistic rights of the children of minorities and indigenous communities, and article 31, the right of the child to engage in play and recreation and in cultural life and the arts. ■

Summary

The child's right to freedom of expression

The Universal Declaration of Human Rights, in its article 19, guarantees: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Article 19 of the International Covenant on Civil and Political Rights contains similar wording.

In a 1989 General Comment, the Human Rights Committee emphasizes that children should benefit from civil rights. The Committee points out that the rights providing specifically for children in article 24 of the Covenant, "are not the only ones that the Covenant recognizes for children and that, as individuals, children benefit from all of the civil rights enunciated in the Covenant..." (Human Rights Committee, General Comment No. 17, 1989, HRI/GEN/1/Rev.8, para. 2, p. 183)

But as the *Manual on Human Rights Reporting,* 1997, comments on children's civil rights: "The prevailing reality was however, and to a certain extent still is, that children, in view of their evolving maturity, are in practice not recognized as having the necessary capacity or competence to exercise them. By their clear incorporation in the Convention, an undeniable statement is made as to their entitlement and ability to fully enjoy such fundamental freedoms." (*Manual*, pp. 434 and 435)

The *Manual* notes that articles 13 to 17 constitute an important chapter of the Convention on the Rights of the Child, indicating the need to envisage the child as an active subject of rights. "States are required to recognize them in the law and to determine therein how their exercise may be ensured. It is therefore not sufficient for the Constitution simply to include them as fundamental rights. In fact, constitutional and/or legal provisions should further indicate how these rights specifically apply to children, which mechanisms have been established to protect them in an effective manner and which remedies are provided in case of their violation." (*Manual*, p. 434)

The Committee on the Rights of the Child has emphasized that, in the case of children, it is not enough that these principles should be reflected in constitutions as applying to "everyone". The Committee expects to see the child's right to freedom of expression expressly guaranteed in legislation (and the article requires that any restrictions on the right are set out in legislation – see below). For example, the Committee commented:

"In the light of articles 13, 14 and 15, the Committee is concerned that the State Party has not taken all legal and other appropriate measures to promote and implement those rights ...
"The Committee recommends that the State Party take all appropriate measures, including legal means, to fully implement articles 13, 14 and 15 of the Convention ..." (Myanmar CRC/C/15/Add.69, paras. 16 and 37)

The Committee has frequently noted that the implementation of article 13 and linked civil rights needs further development. For example:

"The Committee is generally concerned that inadequate attention has been given to the promotion of civil rights and freedoms of the child, as provided for in articles 13, 14, 15, 16, and 17 of the Convention. Information before the Committee indicates that traditional social attitudes regarding the role of children appear to make it difficult to accept children fully as the subjects of rights. The Committee urges the State Party to redouble its efforts to educate and sensitize parliamentarians and government officials, professional groups, parents and children on the importance of accepting fully the concept of child rights, and recommends that legislative measures be envisaged to guarantee the enjoyment of civil rights and freedoms for every child." (Barbados CRC/C/15/Add.103, para. 18)

"The Committee is concerned that the reference in the report to information contained in the Initial Report indicates that very little or no progress has taken place with respect to the implementation of articles 13 to 17 of the Convention on these matters.
"The Committee recommends that the State Party actively promote the implementation of these rights by, among other things, making children more aware of these rights and by facilitating their active use in daily practice and report on the progress made in this regard in the next report." (Syrian Arab Republic CRC/C/15/Add.212, paras. 34 and 35)

The Committee has continued to draw attention to traditional attitudes which hinder enjoyment by the child of the right to freedom of expression (see also article 12, page 154). For example:

"The Committee is concerned at the lack of legal guarantees for the freedom of expression for children below 18 years of age. It is also concerned at the inadequate attention being given to the promotion of and respect for the right of the child to freedom of expression and that prevailing traditional societal attitudes, in the family and in other settings regarding the role of children, appear to make it difficult for children to seek and impart information freely.
"The Committee recommends that the State Party take all appropriate measures, including

amendments to legislation, to promote and guarantee the right of the child to freedom of expression within the family, in the school and other institutions and in society." (Georgia CRC/C/15/Add.222, paras. 28 and 29)

"The Committee welcomes the guarantee of freedom of expression under article 22 of the Constitution, but recognizes that there is a vacuum in the legislative acts on the practical ways to implement this right for children, as noted by the State Party in its report. Furthermore, the Committee is concerned that the prevailing attitudes in the family, in school, in other institutions and in society at large are not conducive to the enjoyment of this right.
"The Committee encourages the State Party to take all appropriate measures, including legal means, to fully implement article 13, and to introduce measures to promote and guarantee the right of the child to freedom of expression." (Albania CRC/C/15/Add.249, paras. 36 and 37)

The Committee has proposed monitoring and research to determine to what extent children's civil rights are respected, within and outside the family. The Committee has also encouraged States to look at the implementation of the child's right to freedom of expression in various settings, including within the family.

In its outline for the Day of General Discussion on "The role of the family in the promotion of the rights of the child", the Committee commented:

"The civil rights of the child begin within the family ... The family is an essential agent for creating awareness and preservation of human rights, and respect for human values, cultural identity and heritage, and other civilizations. There is a need to consider appropriate ways of ensuring balance between parental authority and the realization of the rights of the child, including the right to freedom of expression. Corresponding measures to prevent abrogation of these rights of the child within the family should be discussed." (Committee on the Rights of the Child, Report on the fifth session, January 1994, CRC/C/24, Annex V, p. 63)

The Committee has also stressed the important role of the media in "offering children the possibility of expressing themselves". Article 17 (see page 217) concerns the role of the mass media and ensuring that the child has access to a wide variety of information and material. In the report of its General Discussion on "The child and the media", the Committee promoted children's participatory rights in relation to the media (see article 12, page 169 and article 17, page 218). The Internet and modern information and communications technology, including mobile phones, provide children with new opportunities to seek and impart information regardless of frontiers or adult restrictions. And in one case, the Committee expressed concern at

"... allegations that Internet chat rooms, set up independently by teenagers, have been arbitrarily closed down by the authorities." (Republic of Korea CRC/C/15/Add.197, para. 36)

The Committee has expressed concerns to States about limitations of the freedom of expression and freedom of association of children in schools, including in its first General Comment on "The aims of education":

"... the article [article 29] attaches importance to the process by which the right to education is to be promoted. Thus, efforts to promote the enjoyment of other rights must not be undermined, and should be reinforced, by the values imparted in the educational process. This includes not only the content of the curriculum but also the educational processes, the pedagogical methods and the environment within which education takes place, whether it be the home, school, or elsewhere. Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child, enables the child to express his or her views freely in accordance with article 12(1) and to participate in school life..." (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 8)

In relation to freedom of expression and freedom of association in schools, the Committee has expressed concerns to Japan,

"... about restrictions on political activities undertaken by schoolchildren both on and off school campuses..."

It went on to recommend

"... that the State Party review legislation and regulations governing activities undertaken by schoolchildren on and off campus..." (Japan CRC/C/15/Add.231, paras. 29 and 30)

It found similar concerns when it examined the Republic of Korea's Second Report:

"The Committee is concerned at the limitations on students' freedom of expression and association due to strict administrative control of student councils and school regulations that limit or prohibit outside political activities of students in elementary and secondary schools...
"In the light of articles 12 to 17 of the Convention, the Committee recommends that the State Party amend legislation, guidelines issued by the Ministry of Education and school regulations to facilitate children's active participation in decision-making processes and

in political activities both within and outside schools and ensure that all children fully enjoy their right to freedom of association and expression." *(Republic of Korea CRC/C/15/Add.197, paras. 36 and 37)*

The Committee has expressed concerns about restrictions on the wearing of religious symbols or clothing, raising issues under article 14, the child's right to freedom of religion, as well as article 13 (for details, see article 14, page 185).

Of particular importance to children's freedom of expression is the right to engage in play and recreational activity and to participate freely in cultural life and the arts (see article 31, page 469). Article 30 asserts the particular rights of freedom of expression of children belonging to minorities or indigenous communities to enjoy their own culture, practice and profess their own religion, and use their own language (see article 30, page 455).

Ensuring the freedom of expression rights of children with disabilities may require special attention. The Committee's General Comment No. 9 on "The rights of children with disabilities" emphasizes that all universal civil rights and freedoms, including freedom of expression, must be respected and promoted for all children with disabilities:

"Particular attention should be focused here on areas where the rights of children with disabilities are more likely to be violated or where special programmes are needed for their protection." *(Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, para. 34)*

The Convention on the Rights of Persons with Disabilities, adopted in December 2006, states: "States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

(a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;

(b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;

(c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;

(d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;

(e) Recognizing and promoting the use of sign languages." (Article 21)

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which the Committee has promoted as providing relevant standards for implementation, states in rule 13: "Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty, such as social security rights and benefits, freedom of association and, upon reaching the minimum age established by law, the right to marry." Thus aspects of freedom of expression not incompatible with deprivation of liberty must be preserved in all forms of the restriction of liberty.

Restrictions on child's right: article 13(2)

Restrictions on the child's right to freedom of expression are strictly limited by the provisions of paragraph 2 of the article. The restrictions are the same as those applied to "everyone's" freedom of expression in article 19 of the International Covenant on Civil and Political Rights. Any restrictions must be set out in legislation and must be "necessary" for one of the two purposes set out in subparagraphs (a) and (b) of article 13.

The Committee, in its examination of States Parties' reports, has also challenged limits on any restrictions on children's civil rights, including freedom of expression and freedom of association and peaceful assembly:

"The Committee is concerned about the limitations on the exercise of the right to freedom of expression by children. The Committee notes with concern the violent incidents during a peaceful student demonstration against a rise in bus fares, which took place in the village of Benque Viejo del Carmen on 24 April 2002, and the reported disproportionate use of force by the police authorities.
"The Committee recommends that the State Party encourage and facilitate the exercise by children of their right to freedom of

expression, including their right to freedom of association and of peaceful assembly, so that they can freely discuss, participate and express their views and opinions on all matters affecting them." *(Belize CRC/C/15/Add.252, paras. 38 and 39)*

"The Committee is concerned that although the freedoms of expression and assembly are formally recognized in the Constitution, the exercise of these rights by children are restricted by vaguely worded limitation clauses (i.e. 'in accordance with Islamic criteria'), which potentially exceed the permitted restrictions set out in paragraph 2 of articles 13 and 15 of the Convention. The Committee is concerned at reports of incidents of threats and violence by vigilante groups, such as Ansari-Hezbollah, directed at persons seeking to exercise or to promote the exercise of these rights.
"The Committee recommends that the State Party establish clear criteria to assess whether a given action or expression is in accordance with interpretations of Islamic texts, and consider appropriate and proportionate means to protect public morals while safeguarding the right of every child to freedom of expression and assembly." *(Islamic Republic of Iran CRC/C/15/Add.123, paras. 33 and 34)*

It repeated its concerns when it examined Iran's Second Report:

"The Committee remains concerned that, although freedom of expression and of assembly is formally recognized in the Constitution, the protection of this freedom is restricted by the requirement to interpret it in accordance with Islamic principles without clarifying at the outset the basis on which an action or expression is considered to be in keeping with such principles.
"The Committee reiterates its recommendation, expressed in its previous concluding observations, that the State Party establish clear criteria for determining whether a given action or expression is in accordance with Islamic law and the Convention in order to avoid arbitrary interpretations." *(Islamic Republic of Iran CRC/C/15/Add.254, paras. 39 and 40)*

Article 17(e) of the Convention, on the mass media and other information sources, requires States to: "Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18." Thus any guidelines must be consistent with the right to freedom of expression and with the restrictions allowed under article 13(2).

One particular issue raised during the drafting of the Convention on the Rights of the Child (and more recently in reservations and declarations made by some States upon ratifying the Convention) concerns the role of parents in relation to children's civil rights, including the right to freedom of expression. During the drafting process, a general proposal, that the Convention should confirm explicitly that the civil and political rights accorded to "everyone" in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights do apply to children, met with some opposition at first. The need to acknowledge the parents' role was emphasized. An early draft of what was to become article 13 stated: "Nothing in this article shall be interpreted as limiting or otherwise affecting the authority, rights or responsibilities of a parent or other legal guardian of the child." But discussion proceeded to agree that while children might need direction and guidance from parents or guardians in the exercise of these rights, this does not affect the content of the rights themselves, and also that the evolving capacities of the child must be respected (E/CN.4/1986/39, p. 17; E/CN.4/1987/25, pp. 26 and 27; E/CN.4/1988/28, pp. 9 to 13; Detrick, pp. 230 *et seq*.).

These formulas find general expression in article 5 of the Convention, requiring States to respect the "responsibilities, rights and duties" of parents and others "to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention" (see article 5, page 75). This role for parents is repeated in article 14 (the child's right to freedom of thought, conscience and religion, see page 185) but not in articles 13 or 15.

Various States have issued declarations or reservations concerning the relationship between parents and their children's civil rights, which include article 13. When examining Initial Reports, the Committee has consistently asked for a review and withdrawal of reservations; in particular, the Committee has expressed concern at reservations that suggest a lack of full recognition of the child as a subject of rights.

Other declarations and reservations relate to potential restrictions on freedom of expression and other civil rights. A reservation made by Austria states: "Article 13 and article 15 of the Convention will be applied provided that they will not affect legal restrictions in accordance with article 10 and article 11 of the European Convention on the Protection of Human Rights and Fundamental Freedoms of 4 November 1950."

The European Convention has a wider definition of permitted restrictions in its article on freedom of expression (article 10(2)): "The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

When it examined Austria's Second Report, the Committee noted

"... the explanation by the delegation for the non-withdrawal of the reservations to articles 13, 15 and 17, but remains of the opinion that the reservations are – particularly in the light of the Vienna Declaration and Plan of Action adopted by the World Conference on Human Rights in 1993 – not necessary.
"The Committee recommends that the State Party reconsider the need for maintaining the existing reservations and continue and complete its review with a view to the withdrawal of the reservations in line with the Vienna Declaration and Plan of Action."
(Austria CRC/C/15/Add.251, paras. 6 and 7)

The Human Rights Committee, in its General Comment on the equivalent article 19 in the International Covenant on Civil and Political Rights, emphasizes that it is the interplay between the principle of freedom of expression and any imposed limitations and restrictions that determines the actual scope of the individual's right. Paragraph 3 of article 19 states that the exercise of the right to freedom of expression "carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals."

The General Comment states: "Paragraph 3 expressly stresses that the exercise of the right to freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted which may relate either to the interests of other persons or to those of the community as a whole. However, when a State Party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. Paragraph 3 lays down conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be 'provided by law'; they may only be imposed for one of the purposes set out in subparagraphs (a) and (b) of paragraph 3; and they must be justified as being 'necessary' for that State Party for one of those purposes."

The Human Rights Committee notes that not all countries have provided information in their reports under the Covenant on "all aspects of the freedom of expression. For instance, little attention has so far been given to the fact that, because of the development of modern mass media, effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression in a way that is not provided for in paragraph 3.

"Many States' reports confine themselves to mentioning that freedom of expression is guaranteed under the Constitution or the law. However, in order to know the precise regime of freedom of expression in law and in practice, the Committee needs in addition pertinent information about the rules which either define the scope of freedom of expression or which set forth certain restrictions, as well as any other conditions which in practice affect the exercise of this right..." (Human Rights Committee, General Comment No. 10, 1983, HRI/GEN/1/Rev.8, para. 3, p. 171)

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 13, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 13 is relevant to **departments of family affairs, welfare, education, media and communication**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 13 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 13 likely to include the training of **all those working with or for children and their families, and parenting education**)?

• Specific issues in implementing article 13

- ☐ Is the child's right to freedom of expression as guaranteed in article 13 explicitly recognized in legislation?
- ☐ Do policy and practice actively encourage the child's freedom of expression?

Do law, policy and practice support the child's right to freedom of expression, as set out in article 13, in relation to

- ☐ the family?
- ☐ alternative care?
- ☐ schools?
- ☐ juvenile justice institutions?
- ☐ the community?
- ☐ the media?

- ☐ Are the only permitted restrictions on the right to freedom of expression consistent with those set out in paragraph 2 of article 13 and are they defined in legislation?

How to use the checklist, *see page XIX*

- ☐ In particular, are any restrictions on the child's right to contribute to and to publish school and other publications consistent with those set out in paragraph 2?
- ☐ Are special measures taken to ensure the freedom of expression of children with disabilities?
- ☐ Has the State taken any specific measures to encourage and facilitate children's access to the media?
- ☐ Is there any provision for consideration and resolution of complaints from children regarding breaches of their right to freedom of expression?

Reminder: **The Convention is indivisible and its articles interdependent. Article 13 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 13 include:

Article 5: parental responsibilities and child's evolving capacities
Article 15: freedom of association
Article 17: access to appropriate information; role of the mass media
Article 29: aims of education
Article 30: cultural, religious and language rights of children of minorities and indigenous communities
Article 31: child's rights to play, to recreation and to participation in cultural life and the arts.

Child's right to freedom of thought, conscience and religion

Text of Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 14 of the Convention on the Rights of the Child confirms for the child the fundamental civil right to freedom of thought, conscience and religion, which is upheld for "everyone" in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The second paragraph, echoing article 5 of the Convention, requires respect for the role of parents in providing direction to the child "in a manner consistent with the evolving capacities of the child". The International Covenant requires respect for the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions, but the emphasis in the Convention on the Rights of the Child is on the freedom of religion of the child, with parental direction consistent with the child's evolving capacities. Paragraph 3 sets out the very limited restrictions allowed on the child's freedom to manifest his or her religion or belief.

The Initial Reports of many States simply recorded that this right is reflected in their Constitutions and applies equally to children. It is apparent from a range of declarations and reservations that, in some States, the right of the child to freedom of religion conflicts with tradition and, in some cases, with legislation. Few States appear as yet to have reflected the child's right in domestic legislation, and in many, it is parents who determine the child's religion. The Committee has expressed particular concern at arrangements for religious education in schools which do not respect children's freedom of religion. ■

Summary

Freedom of thought

Children's right to freedom of thought provokes little controversy or comment in States' successive reports or from the Committee. The concept of freedom of thought is linked to the right to form and express views, in article 12. The practical implementation of freedom of thought is related to the freedom to seek, receive and impart information and ideas of all kinds, under article 13; to the child's access to appropriate information, under article 17; and to the child's education, under articles 28 and 29. The child's right to privacy, in article 16, implies that children cannot be forced to reveal their thoughts.

There are no restrictions on the right to freedom of thought. Paragraph 2 requires respect for the rights and duties of parents and others to provide direction to the child in the exercise of the right, consistent with the child's evolving capacities.

Freedom of conscience

Again, the Convention on the Rights of the Child provides no restrictions to the child's right to freedom of conscience, but paragraph 2 of article 14 allows for parents' direction. Issues of conscience might arise, for example, concerning diet, such as vegetarianism, or environmental issues. One issue of conscience on which there are various human rights recommendations, but no explicit mention in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, or in the Convention, is that of conscientious objection to military service. The Convention, in article 38, prohibits recruitment into the armed forces of anyone under the age of 15 and the Optional Protocol on the involvement of children in armed conflict requires States to ensure no compulsory recruitment of children under 18 years (see page 659). Conscientious objection remains a real issue for 15- to 18-year-olds in some countries. In addition, some countries contain militaristic youth organizations and include some form of military training within the education system; if compulsory, these could conflict with article 14.

The first edition of the *Manual on Human Rights Reporting*, 1991, in a commentary on the right to freedom of thought, conscience and religion in article 18 of the International Covenant on Civil and Political Rights, suggests that "the status and position of conscientious objectors should be discussed under this article, and statistical information should be provided regarding the number of persons that applied for the status of, and the number of those that were actually recognized as, conscientious objectors; the reasons given to justify conscientious objection and the rights and duties of conscientious objectors as compared with those persons who serve in the regular military service". (*Manual on Human Rights Reporting,* 1991, p. 108)

Freedom of religion

Article 14 protects the child's right to freedom of religion, which is an absolute right, and to manifest his or her religion, which may be subject to the very limited restrictions outlined in paragraph 3.

In addition, article 30 of the Convention (see page 455) upholds the right of a child who belongs to an ethnic, religious or linguistic minority or who is indigenous "to profess and practise his or her own religion..." And in arranging alternative care, under article 20, States must pay due regard to the child's religious background (see below, page 189).

What freedom of religion means

Article 18(1) of the International Covenant on Civil and Political Rights expands on the right to freedom of religion: "... This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching." The second paragraph states: "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."

The Human Rights Committee issued a lengthy General Comment on article 18 in 1993. It emphasizes that the terms "religion" and "belief" are to be broadly construed, protecting theistic, non-theistic and atheistic beliefs as well as the right not to profess any religion or belief. The article "does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice". No one can be compelled to reveal his adherence to a religion or belief: this is assured by article 18 and by the right to privacy set out in article 17 of the Covenant (Human Rights Committee, General Comment No. 22, 1993, HRI/GEN/1/Rev.8, para. 2, p. 195). The child's right to privacy is echoed in article 16 of the Convention on the Rights of the Child.

The Committee on the Rights of the Child has expressed concern at restrictions on children's freedom of religion and quoted other international instruments and the recommendations of other Treaty Bodies. For example:

"The Committee emphasizes that the human rights of children cannot be realized independently from the human rights of their parents, or in isolation from society at large. In the light of article 14 of the Convention, the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (General Assembly resolution 36/55), Commission on Human Rights resolution 2000/33, the Human Rights Committee's General Comment No. 22, and concurring with the findings of the Human Rights Committee (CCPR/C/79/Add.25) and the Committee on Economic, Social and Cultural Rights (E/C.12/1993/7), the Committee is concerned at the restrictions on the freedom of religion, and that restrictions on the freedom to manifest one's religion do not comply with the requirements outlined in article 14, paragraph 3. The Committee is especially concerned at the situation of members of non-recognized religions, including the Baha'is, who experience discrimination in areas of, inter alia, *education, employment, travel, housing and the enjoyment of cultural activities.*
"The Committee recommends that the State Party take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life. The Committee recommends that the State Party make every effort to enact or rescind, where necessary, legislation to prohibit any such discrimination, and take all appropriate measures, including public education campaigns, to combat intolerance on the grounds of religion or other belief. The Committee endorses the recommendations made by the Special Rapporteur on the question of religious intolerance following his visit to the State Party (E/CN.4/1996/95/Add.2) and recommends that the State Party implement them fully." (Islamic Republic of Iran CRC/C/15/Add.123, paras. 35 and 36)

The Committee followed this up when it examined Iran's Second Report:

"The Committee is concerned that little progress has been made in the area of freedom of religion and notes that members of unrecognized religions continue to be discriminated against and do not have the same rights as those of recognized religions, for example with regard to access to social services. In addition, it continues to be concerned at reports that these minorities, in particular the Baha'i minority, are subjected to harassment, intimidation and imprisonment on account of their religious beliefs.
"The Committee recommends that the State Party take effective measures, including enacting or rescinding legislation, to prevent and eliminate discrimination on the grounds of religion or belief and ensure that members of minority religions are not imprisoned or otherwise ill-treated on account of their religion and that access to education for their children is provided on an equal footing with others." (Islamic Republic of Iran CRC/C/15/Add.254, paras. 41 and 42)

"With reference to the findings of the Special Rapporteur on freedom of religion or belief during his visit to Algeria in 2002 (see E/CN.4/2003/66/Add.1) and the interpretative declaration of the State Party to article 14 of the Convention, the Committee is concerned that the right of the child to freedom of thought, conscience and religion is not fully respected and protected.
"In the light of article 14 of the Convention, the Committee recommends that the State Party respect the right of the child to freedom of thought, conscience and religion by taking effective measures to prevent and eliminate all forms of discrimination on the grounds of religion or belief and by promoting religious tolerance and dialogue in society..." (Algeria CRC/C/15/Add.269, paras. 37 and 38)

"While noting the adoption of the Regional Ethnic Autonomy Act in 2001, which guarantees freedom of religion for ethnic minorities in mainland China, the Committee is concerned about reports that children, in particular Tibetan Buddhist, Uighur and Hui children, have been restricted in studying and practising their religion, and in some cases have been detained for participating in religious activities. It is also concerned at reports that children of families practising their religion, notably the Falun Gong, are subject to harassment, threats and other negative actions, including re-education through labour. The Committee notes the information provided about the Gedhun Choekyi Nyima, but remains concerned that it has not yet been possible to have this information confirmed by an independent expert.
"The Committee recommends that the State Party take all necessary measures to ensure the full implementation of the Regional Ethnic Autonomy Act. In particular, the Committee recommends that the State Party:
(a) Enact legislation explicitly guaranteeing freedom of religion for those under 18 that is not tied to a limited number of recognized faiths, and which respects the rights and duties of parents to give guidance to their children in the exercise of their rights in this regard in a manner consistent with the evolving capacities of the child;
(b) Repeal any ban instituted by local authorities on children of any age from participating in Tibetan religious festivals or receiving religious education;

(c) Repeal any ban instituted by local authorities on children of any age from attending mosques or receiving religious education throughout the mainland;
(d) Take all necessary measures to ensure that children may choose whether to participate in classes on religion or atheism;
(e) Allow an independent expert to visit and confirm the well-being of Gedhun Choekyi Nyima while respecting his right to privacy, and that of his parents." *(China CRC/C/CHN/CO/2, paras.44 and 45)*

"The Committee is concerned that the right of the child to freedom of thought, conscience and religion is not fully respected and protected. The Committee is concerned about hate speech against religious minorities in schools and mosques.
"In the light of article 14 of the Convention, the Committee recommends that the State Party respect the right of the child to freedom of thought, conscience and religion by taking effective measures to prevent and eliminate all forms of discrimination on the grounds of religion or belief and by promoting religious tolerance and dialogue in society." *(Saudi Arabia CRC/C/SAU/CO/2, paras. 40 and 41)*

"The Committee is concerned that in Turkmenistan religious organizations encounter difficulties related to the procedure for their registration and face restrictions with respect to the exercise of their activities. The Committee is also concerned at reports of instances of raids on religious meetings and demolition of places of worship.
"The Committee recommends that the State Party respect the right of the child to freedom of religion. The State Party should ensure that all religious organizations are free to exercise their right to freedom of religion or belief subject only to the limitations provided for in article 14 of the Convention. The Committee further recommends that the State Party prevent, prohibit and punish any violent attack against religious activities, including demolition of places of worship." *(Turkmenistan CRC/C/TKM/CO/1, paras. 34 and 35)*

The child's right and parental direction: article 14(2)

The Convention on the Rights of the Child differs from previous instruments in its treatment of the child's right to freedom of religion *vis-à-vis* his or her parents. For example, in the International Covenant on Civil and Political Rights, paragraph 4 of article 18 refers to the parent-child relationship and requires respect for "the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions" (see discussion of religious education in schools, below, page 188).

Yet article 14 of the Convention on the Rights of the Child refers unambiguously to the right of the child to freedom of religion. The second paragraph refers to the "rights and duties" of parents rather than to their "liberty". Similar to the general statement given in article 5, article 14 requires States to "respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child". But it is the child who exercises the right. Parents can provide direction, but the direction must be consistent with the child's evolving capacities and must be applied in conformity with the whole of the Convention. "Direction" cannot involve, for instance, any form of physical or mental violence (article 19). And the child's views must be taken seriously: article 12 preserves the right of all children who can form views to express their views freely "in all matters affecting the child", which includes matters of religion and choice of religion; article 13 upholds the child's freedom of expression.

The wording of article 14 and the Convention articles identified as general principles certainly do not support the concept of children automatically following their parent's religion until the age of 18, although article 8 (preservation of identity), article 20 (preservation of religion when deprived of family environment), and article 30 (right to practice religion in community with members of the child's group) support children's right to acquire their parents' religion.

More States Parties have made reservations or declarations concerning article 14 of the Convention than any other article. Some are wide-ranging reservations or declarations upholding parental rights and authority in relation to the civil rights of children, in particular articles 13, 14 and 15.

For example, Algeria made an interpretative declaration: "The provisions of paragraphs 1 and 2 of article 14 shall be interpreted by the Algerian Government in compliance with the basic foundations of the Algerian legal system, in particular:

- With the Constitution, which stipulates in its article 2 that Islam is the state religion and in its article 35 that there shall be no infringement of the inviolability of the freedom of conviction and the inviolability of the freedom of opinion;
- With Law No. 84-11 of 9 June 1984, comprising the Family Code, which stipulates that

a child's education is to take place in accordance with the religion of its father."
(CRC/C/2/Rev.8, p. 11)

In contrast, a declaration from the Netherlands states its understanding that article 14 "is in accordance with the provisions of article 18 of the International Covenant on Civil and Political Rights... and that this article shall include the freedom of a child to have or adopt a religion or belief of his or her choice as soon as the child is capable of making such choice in view of his or her age or maturity". (CRC/C/2/Rev.8, p. 32)

Other States, where Islam is the state religion, made reservations focusing specifically on the child's right to freedom of religion. For example: "[Iraq] ha[s] seen fit to accept it [the Convention]… subject to a reservation in respect of article 14, paragraph 1, concerning the child's freedom of religion, as allowing a child to change his or her religion runs counter to the provisions of the Islamic Shariah."; "The Government of the Republic of Maldives expresses its reservation to paragraph 1 of article 14…, since the Constitution and the laws of the Republic of Maldives stipulate that all Maldives should be Muslims"; "The Kingdom of Morocco, whose Constitution guarantees to all the freedom to pursue his religious affairs, makes a reservation to the provisions of article 14, which accords children freedom of religion, in view of the fact that Islam is the state religion"; "The Sultanate [of Oman] does not consider itself to be bound by those provisions of article 14 of the Convention that accord a child the right to choose his or her religion or those of its article 30 that allow a child belonging to a religious minority to profess his or her own religion."
(CRC/C/2/Rev.8, pp. 26, 29, 30, 35)

Article 51 of the Convention on the Rights of the Child states: "A reservation incompatible with the object and purpose of the present Convention shall not be permitted." Ten States Parties have recorded objections to certain of these reservations to article 14 (see CRC/C/2/Rev.8, pp. 48 *et seq.*). The Committee has expressed concern at reservations that suggest lack of full recognition of the child as a subject of rights and, consistent with its general policy, the Committee has urged States to review and withdraw all reservations (see article 4, page 49).

In some States, courts have powers to overrule parents who have refused certain types of medical treatment for their children on the grounds of religious conviction. Under the Convention on the Rights of the Child, it is clear that the State should have such powers to seek intervention. Under article 3(2), "States undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures." Under article 12, the child's views should be appropriately respected in any proceedings. Respect for children's refusal of treatment on grounds of their own religious convictions is dependent on their evolving capacities and on consideration of the Convention's general principles.

When parents disagree over the child's religion

The Convention on the Rights of the Child requires States to recognize the principle that "both parents have common responsibilities for the upbringing and development of the child" (article 18). This must apply to the qualified parental direction that article 14 authorizes in the exercise by the child of his or her right to freedom of religion. Neither parent should have "authority" over such matters. Where there is disagreement and the matter goes to court, the matter should be decided on the basis of the child's right under article 14, with the child's views taken seriously according to his or her age and maturity.

The child's right to freedom of religion in alternative care

When children are separated from their families and are in alternative care provided by the State or otherwise, article 14 of the Convention requires that their right to freedom of religion must be maintained. In many countries, religious organizations are prominent in providing alternative care for children. Article 20(3) states that when considering alternative care for a child, "due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background" (see article 20, page 288). But inflexible laws requiring that the child should automatically be brought up in the religion of his or her parent(s) do not respect the child's right to freedom of religion guaranteed by article 14.

Religious communities

Under article 14, the ability of children to decide to join or leave a religious community should be subject to parental direction, exercised in accordance with their evolving capacities, and to the particular restrictions in paragraph 3. Some States have legislated on these issues.

Schooling and freedom of religion

Ensuring freedom of religion in the context of compulsory education has become an increasing concern for the Committee.

In its first General Comment, issued in 2001, on "The aims of education", the Committee emphasizes that "children do not lose their human rights by virtue of passing through the school gates" and highlights the importance of schools respecting children's participation rights (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 8).

As noted above (page 188), the International Covenant on Civil and Political Rights requires States (in article 18(4)) to respect "the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions". In its General Comment on this provision, the Human Rights Committee states: "The Committee is of the view that article 18(4) permits public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way. The liberty of parents or legal guardians to ensure their children receive a religious and moral education in conformity with their own convictions, set forth in article 18(4), is related to the guarantees of the freedom to teach a religion or belief stated in article 18(1). The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with article 18(4) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians." (Human Rights Committee, General Comment No. 22, 1993, HRI/GEN/1/Rev.8, para. 6, p. 196)

But the Convention on the Rights of the Child requires that arrangements for moral and religious education be reviewed to ensure respect for the **child's** right to freedom of religion, with parental direction provided in a manner consistent with the child's "evolving capacities".

Some States do not allow religious teaching in state-supported education. In others, there may be religious education and worship or observance in one or more religions. Some States have set an age at which any control of the child's manifestation of religion transfers from parents to the child, although the concept of "evolving capacities" in article 5 and article 14 appears to demand more flexibility.

The Committee expresses concern if the compulsory school curriculum does not provide for children's freedom of religion. For example:

"The Committee notes that the study of the history of the Armenian Apostolic Church in 2002 was made a compulsory subject in schools.
"In the light of article 14, the Committee recommends that the above-mentioned compulsory subject does not infringe upon the rights of children belonging to religious minorities." (Armenia CRC/C/15/Add.225, paras. 31 and 32)

"While recognizing the State Party's acceptance of freedom of religion, the Committee is concerned at the fact that classes on Catholicism are part of the curriculum, which is discriminatory for non-Catholic children.
"The Committee recommends that the State Party devise a curriculum that will ensure that the child's freedom of religion can be fully realized in the educational system without any discrimination." (Costa Rica CRC/C/15/Add.266, paras. 25 and 26)

Where religious education in schools is not compulsory, or there are arrangements for exemption, the Committee questions whether they are adequate to achieve freedom of religion:

"The Committee is concerned that, despite regulations guaranteeing that parents can choose for their children to attend ethics classes instead of religion classes in public schools, in practice few schools offer ethics courses to allow for such a choice and students require parental consent to attend ethics courses.
"The Committee recommends that the State Party ensure that all public schools permit children, in practice, to choose freely whether to attend religion or ethics classes with parental direction provided in a manner consistent with the child's evolving capacities." (Poland CRC/C/15/Add.194, paras. 32 and 33)

"The Committee is concerned that, as mentioned in the State Party's report (para. 147), children, especially in elementary schools, may suffer from marginalization if they abstain from religious instruction, which is mainly covering Catholic religion. In addition, the Committee is concerned that parents, notably those of foreign origin, are not always aware that religious instruction is not compulsory.
"In the light of articles 2, 14 and 29 of the Convention, the Committee recommends that the State Party make sure that parents, in particular of foreign origin, when they are filling out the relevant forms, are aware that Catholic religious instruction is not compulsory." (Italy CRC/C/15/Add.198, paras. 29 and 30)

Commenting on Norway's Second Report, the Committee suggested that a new system for providing exemptions from parts of the religious knowledge curriculum might be discriminatory:

"The Committee is concerned that the approach taken by the State Party's Act No. 61 of 17 July 1998 relating to primary, lower secondary and upper secondary education,

which introduces a new common curriculum on 'Religions, Knowledge and Ethical Education', may be discriminatory. The Committee is concerned notably by the process of providing for exemptions to those children and parents who do not wish to participate in parts of the teaching.
"The Committee recommends that the State Party review the implementation of the new curriculum and consider an alternative exemption process." (Norway CRC/C/15/Add.126, paras. 26 and 27)

It followed this up when it examined Norway's Third Report:

"The Committee takes note of the Views of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights of 3 November 2004 (CCPR/C/82/D/1155/2003) regarding the teaching of the school subject Christian Knowledge and Religious and Ethical Education. In this regard, the Committee welcomes the State Party's information on the planned changes of the Education Act to bring the teaching of Christian Knowledge and Religious and Ethical Education into full compliance with the right to freedom of religion enshrined in article 14 of the Convention. The Committee encourages the State Party to expedite the process of adopting and enacting these changes." (Norway, CRC/C/15/Add.263, para. 20)

The Committee was referring to the Views of the Human Rights Committee on an individual communication from a group of Norwegian parents and children. Norway has a state religion and a state Church, of which approximately 86 per cent of the population are members. In August 1997, the Norwegian government introduced a new mandatory religious subject in the Norwegian school system, entitled "Christian Knowledge and Religious and Ethical Education" (CKREE), replacing the previous "Christianity" subject and the "life stance" subject. This new subject only provided for exemption from certain limited segments of the teaching. The applicants claimed that the State Party violated their rights to freedom of religion – i.e., their right to decide on the type of "life stance" upbringing and education their children shall have - and their right to privacy. They also claimed that the partial exemption procedure violated the prohibition of discrimination.

The Human Rights Committee found a violation of article 18(4) of the International Covenant on Civil and Political Rights: "The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions". The Committee told Norway that it was under an obligation to provide the authors with "an effective and appropriate remedy that will respect the right of the applicants as parents to ensure and as pupils to receive an education that is in conformity with their own convictions. The State Party is under an obligation to avoid similar violations in the future." (Human Rights Committee, Communication No. 1155/2003: Norway. 23/11/2004, CCPR/C/82/D/1155/2003)

Another form of discrimination associated with school religion may arise when States provide funding for schooling in certain religions but not others.

The Committee has expressed concern at limitations on children's (and in some cases teachers') freedom to wear religious symbols and/or clothing, raising issues under article 14 and also under article 13 (freedom of expression) and article 29 (aims of education):

"The Committee is concerned about information brought to its attention which indicates that the exercise of the right to freedom of religion may not always be fully guaranteed, particularly with regard to regulations prohibiting the wearing of a headscarf by girls in schools.
"The Committee recommends that the State Party take all necessary measures to ensure the full implementation of the right to freedom of thought, conscience and religion." (Tunisia CRC/C/15/Add.181, paras. 29 and 30)

"The Committee notes the decision of the Constitutional Court of 24 September 2003 (2 BvR 1436/02, Case Ludin) but is concerned at laws currently under discussion in some of the Länder aiming at banning schoolteachers from wearing headscarves in public schools, as this does not contribute to the child's understanding of the right to freedom of religion and to the development of an attitude of tolerance as promoted in the aims of education under article 29 of the Convention.
"The Committee recommends that the State Party take educational and other measures aimed at children, parents and others to develop a culture of understanding and tolerance, particularly in the area of freedom of religion, conscience and thought by, inter alia, *avoiding measures which single out a particular religious group."* (Germany CRC/C/15/Add.226, paras. 30 and 31)

"The Committee notes that the Constitution provides for freedom of religion and that the law of 1905 on the separation of church and State prohibits discrimination on the basis of faith. The Committee equally recognizes the importance the State Party accords to secular public schools. However, in the light

of articles 14 and 29 of the Convention, the Committee is concerned by the alleged rise in discrimination, including that based on religion. The Committee is also concerned that the new legislation (Law No. 2004-228 of 15 March 2004) on wearing religious symbols and clothing in public schools may be counterproductive, by neglecting the principle of the best interests of the child and the right of the child to access to education, and not achieve the expected results. The Committee welcomes that the provisions of the legislation will be subject to an evaluation one year after its entry into force.

"The Committee recommends that the State Party, when evaluating the effects of the legislation, use the enjoyment of children's rights, as enshrined in the Convention, as a crucial criteria in the evaluation process and also consider alternative means, including mediation, of ensuring secular character of public schools, while guaranteeing that individual rights are not infringed upon and that children are not excluded or marginalized from the school system and other settings as a result of such legislation. The dress code of schools may be better addressed within the public schools themselves, encouraging participation of children. The Committee further recommends that the State Party continue to closely monitor the situation of girls being expelled from schools as a result of the new legislation and ensure they enjoy the right of access to education." *(France CRC/C/15/Add.240, paras. 25 and 26)*

The Committee on the Rights of the Child has found, in addition, that issues affecting the child's privacy may arise in relation to religion in schools. In considering the arrangements in Norway to allow opting out of religious education, the Committee raised the need to respect the privacy of the child in relation to his or her religious faith:

"The Committee notes that although an opting-out system exists for children wishing to abstain from compulsory religious education, this requires their parents to submit a formal request exposing the faith of the children involved and as such may be felt to be an infringement of their right to privacy." *(Norway CRC/C/15/Add.23, para. 9)*

It raised similar discrimination and privacy issues with Greece:

"The Committee expresses its concern at reports of administrative and social pressures being placed on children from religious minorities including, for example, the requirement that a student's secondary school graduation certificate indicate, where this is the case, that the student does not practise the Greek Orthodox religion.

"The Committee recommends that the State Party ensure that a child's religious affiliation, or lack of one, in no way hinders respect for the child's rights, including the right to non-discrimination and to privacy, for example in the context of information included in the school graduation certificate." *(Greece CRC/C/15/Add.170, paras. 44 and 45)*

Limitations on manifestation of religion: article 14(3)

The limitations allowed by paragraph 3 on the freedom "to manifest one's religion or beliefs" are identical to those in article 18(3) of the International Covenant on Civil and Political Rights. In its General Comment referred to above, the Human Rights Committee "… notes that article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief: "It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19.1…"

In relation to the freedom to manifest religion or belief, the Human Rights Committee emphasizes that restrictions are permitted "only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others... In interpreting the scope of permissible limitation clauses, States Parties should proceed from the need to protect the rights guaranteed under the Covenant... Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner..." (Human Rights Committee, General Comment No. 22, 1993, HRI/GEN/1/Rev.8, paras. 3 and 8, p. 196)

Discrimination on grounds of religion

Article 2 requires States to respect and ensure the rights in the Convention on the Rights of the Child to each child in their jurisdiction without discrimination of any kind, irrespective of "the

child's or his or her parent's or legal guardian's ... religion..." Thus, under article 2 and article 14, the child must not suffer discrimination because of the child's right to have a religion, or to have no religion, nor over the child's right to manifest his or her religion.

In addition, there must be no discrimination affecting the child's enjoyment of any other rights under the Convention on the grounds of the child's, or his or her parent's, religion. And article 2(2) requires States to take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of the child's parents, legal guardians or family members.

The Human Rights Committee, in its General Comment on article 18 of the International Covenant on Civil and Political Rights quoted above, also emphasizes: "The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant... nor in any discrimination against adherents to other religions or non-believers." (Human Rights Committee, General Comment No. 22, 1993, HRI/GEN/1/Rev.8, para. 9, p. 196)

Article 24(3) of the Convention on the Rights of the Child requires States to "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children". And article 19 requires States to ensure protection from "all forms of physical or mental violence". Practices that stem from or are linked to manifestations and observance of religions must not involve breaches of these or any other articles of the Convention.

Children with disabilities and freedom of religion. The Standard Rules on the Equalization of Opportunities for Persons with Disabilities includes a section on encouraging measures for equal participation in the religious life of their communities by persons with disabilities (rule 12). It proposes that "States should encourage the distribution of information on disability matters to religious institutions and organizations. States should also encourage religious authorities to include information on disability policies in the training for religious professions, as well as in religious education programmes."

Religion and children deprived of their liberty. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which the Committee on the Rights of the Child has commended to States Parties, requires: "... The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected" (rule 4). And in detail it states: "Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination." (Rule 48)

In its General Comment, quoted above, the Human Rights Committee also emphasized that "Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint." (Human Rights Committee, General Comment No. 22, 1993, HRI/GEN/1/Rev.8, para. 8, p. 196)

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

article 14

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 14, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 14 is particularly relevant to **departments of social welfare and education and to agencies responsible for the State's relations with recognized religions**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 14 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 14 likely to include the training of **religious groups and all those working with or for children and their families, and parenting education**)?

• Specific issues in implementing article 14

- ☐ Is the child's right to freedom of thought, conscience and religion, as guaranteed in article 14, explicitly recognized in legislation?
- ☐ Are there legislative and other arrangements to respect the child's conscientious objection to military service?
- ☐ Are the only restrictions on the child's right to manifest religion or beliefs consistent with those set out in paragraph 3 of article 14, and are they defined in legislation?

Do law, policy and practice promote the child's right to freedom of thought, conscience and religion, as set out in article 14, in relation to

- ☐ the child/parent relationship?
- ☐ all forms of alternative care?
- ☐ school?

- ☐ Do law, policy and practice respect the rights and duties of parents to provide appropriate direction in the exercise by the child of his/her right as set out in article 14?

How to use the checklist, *see page XIX*

- ☐ If the State has one or more religions recognized in law, does legislation respect the right of the child to have and/or practice another religion or no religion?
- ☐ Do any restrictions on the right of the child to enter or leave religious communities respect the child's evolving capacities?

Does legislation permit withdrawal from religious education and/or worship in schools at the request of

- ☐ the child?
- ☐ the child's parents?

- ☐ In such cases, is education and/or arrangements for worship in the religion of the child made available?
- ☐ Where the State supports the provision of education in different religions, is this done without discrimination?
- ☐ Is there provision for the consideration and resolution of complaints from children regarding breaches of their rights under article 14?
- ☐ Have special measures been adopted to ensure the freedom of religion of children with disabilities?
- ☐ In relation to children whose liberty is restricted, is rule 48 of the United Nations Rules for the Protection of Children Deprived of their Liberty fulfilled?

Reminder: **The Convention is indivisible and its articles interdependent. Article 14 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 14 include:

Article 5: parental responsibilities and child's evolving capacities
Article 8: preservation of identity
Articles 13 and 15: freedom of expression and freedom of association
Article 17: access to appropriate information
Article 20: alternative care – continuity of religion and culture
Articles 28 and 29: right to education and aims of education
Article 30: rights of children of minorities and indigenous communities
Article 37: restriction of liberty and religious freedom
Article 38: armed conflict and conscientious objection

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Child's right to freedom of association and peaceful assembly

Text of Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

*2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.*

Summary

Together with articles 12 and 13, the rights to freedom of association and freedom of peaceful assembly promote the child as an active, participating member of society. Article 12 sets out the right of individual children to express their views freely; article 15 adds rights of collective participation.

Previous human rights instruments have promoted these rights for "everyone". As with other civil rights, the Committee on the Rights of the Child has encouraged their incorporation into States' own legislation with specific reference to children's rights. The Committee has emphasized that the only restrictions that may be applied are those set out in paragraph 2 of article 15. ■

The child's right to freedom of association

Article 20 of the Universal Declaration of Human Rights states: "1. Everyone has the right to freedom of peaceful assembly and association. 2. No one may be compelled to belong to an association." The International Covenant on Civil and Political Rights reasserts these rights in its articles 21 and 22, noting also the specific right to form and join trade unions, and applying the same limited restrictions as are set out in paragraph 2 of article 15 of the Convention on the Rights of the Child. While in many States constitutional principles, echoing the international instruments, confer a right of association on "everyone", the implications of recognizing this right for children are still not widely explored. The Committee on the Rights of the Child has recommended that the rights for children guaranteed by article 15 should be reflected in legislation. The right to freedom of association includes association with an individual as well as with a group, so long as the individual does not threaten the child's other rights, including to protection.

Freedom of association implies the right to form associations as well as to join and to leave associations. In recommendations adopted following its 2006 Day of General Discussion on "The right of the child to be heard", the Committee recognizes the important role played by non-governmental organizations in facilitating the active participation and organization of children and youth at the national and international level:

"Furthermore, the Committee welcomes the increasing number of youth-led organizations in various parts of the world. In this context, the Committee reminds States Parties of the right to exercise freedom of association as stipulated in article 15 of the Convention." *(Committee on the Rights of the Child, Report on the forty-third session, September 2006, Day of General Discussion, Recommendations, para. 33)*

The *Guidelines for Periodic Reports (Revised 2005)* asks States to provide data on the number of child and youth organizations or associations and the number of members they represent, and also on the number of schools with independent student councils (CRC/C/58/Rev.1, Annex, paras. 6 and 7).

The Committee has specifically commended the establishment of student organizations in schools and children's organizations in local municipalities. Various States' reports have described legislation providing for schools councils and the structures enabling children to have a say in decision-making within their local community (see also article 12, page 151).

In its first General Comment, issued in 2001, on "The aims of education", the Committee emphasizes that

"Children do not lose their human rights by virtue of passing through the school gates..." *(CRC/GC/2001/1, para. 8)*

and highlights the importance of schools respecting children's participation rights. The Committee commented on Honduras' Second Report:

"Although the Committee notes with appreciation the enactment of the Education Reform Law, which encourages and increases the participation of children in schools, it is still concerned that participatory rights of children have not been sufficiently developed in the State Party. In addition, concern is also expressed at the existing legal prohibition of students' organizations in secondary schools, which is contrary to the child's rights to freedom of association and peaceful assembly. In light of articles 15 and 16 and other related articles of the Convention, the Committee recommends that further measures, including legislative reform, be undertaken to promote the participation of children in the family, school and social life, as well as the effective enjoyment of their fundamental freedoms, including the freedoms of opinion, expression, and association." *(Honduras CRC/C/15/Add.105, para. 22)*

It should be noted that, in general, the law concerning contracts and administration of organizations may pose obstacles for children below the age of majority or the age of legal capacity acting as directors or trustees of public associations. It seems that few countries have as yet explored this from the perspective of the full implementation of article 15.

The Committee has expressed concern at limits on children joining or establishing political organizations. For example:

"The Committee is concerned about restrictions on political activities undertaken by schoolchildren both on and off school campuses...
"The Committee recommends that the State Party review legislation and regulations governing activities undertaken by schoolchildren on and off campus..." *(Japan CRC/C/15/Add.231, paras. 29 and 30)*

"The Committee is concerned at the contradiction between the information provided by the Ministry of Education in the State Party's report whereby students have the right to freedom of association, including the right to participate in students' political parties, and article 18 of the Childhood and Adolescence Code which establishes that persons below the age of 18 have the right to freedom of association, except for political or lucrative activities.

"The Committee recommends that the State Party take appropriate measures to ensure the coherence of its legislation with regard to the right of persons below the age of 18 to be involved in political activities." (Costa Rica CRC/C/15/Add.266, paras. 23 and 24)

The Committee commented to Georgia:

"The Committee notes with concern that the law prohibits youth from becoming members of political parties and that this prohibition limits the opportunity for youth to learn about the political process, delays their preparation for political leadership, and denies their full right to freedom of association.
"In the light of article 15 of the Convention, the Committee recommends that the State Party amend its legislation to ensure that youth are allowed to join political parties and that they fully enjoy their right to freedom of association." (Georgia CRC/C/15/ Add.124, paras. 30 and 31)

Following examination of Georgia's Second Report, the Committee acknowledged progress:

"The Committee welcomes the information provided in the State Party's report on the Children's Parliament, the Children's Forum and the Georgian Children's Federation, as well as on the provisions of the Children's and Youth Associations Act, and notes the resolution of the Children's Parliament recommending representation of children with disabilities and children in institutions among its membership.
"The Committee recommends that the State Party continue and strengthen its efforts to promote and support these and other activities of children and in particular facilitate and support participation of children with disabilities and children in institutions." (Georgia CRC/C/15/Add.222, paras. 30 and 31)

Unlike the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child does not uphold the specific right of children to "form and join trade unions for the protection of his interests" (article 22(1) of the Covenant). But the right is implied in the right to freedom of association, and the limitations in article 15(2) would not justify preventing children from forming or joining unions. Article 32 sets out States' duties to prevent economic and other exploitation in labour (see page 479).

The child's right to freedom of peaceful assembly

The importance of article 15 is its emphasis on children as holders of fundamental civil rights, including the right to engage in peaceful activities as a group. The only restrictions on this right must be defined in legislation and come within the restrictions allowed under paragraph 2 of the article (see below).

Thus, for example, the Committee expressed concern to Belize about the response to a student demonstration:

"The Committee is concerned about the limitations on the exercise of the right to freedom of expression by children.
The Committee notes with concern the violent incidents during a peaceful student demonstration against a rise in bus fares, which took place in the village of Benque Viejo del Carmen on 24 April 2002, and the reported disproportionate use of force by the police authorities.
"The Committee recommends that the State Party encourage and facilitate the exercise by children of their right to freedom of expression, including their right to freedom of association and of peaceful assembly, so that they can freely discuss, participate and express their views and opinions on all matters affecting them." (Belize CRC/C/15/Add.252, paras. 38 and 39)

Restrictions on the child's rights: article 15(2)

The Committee on the Rights of the Child has stressed that the rights in article 15 may only be restricted in accordance with paragraph 2 of article 15; restrictions must be defined in legislation and be necessary for one of the specific reasons set out in the article:

"The Committee is concerned that although the freedoms of expression and assembly are formally recognized in the Constitution, the exercise of these rights by children are restricted by vaguely worded limitation clauses (i.e. 'in accordance with Islamic criteria'), which potentially exceed the permitted restrictions set out in paragraph 2 of articles 13 and 15 of the Convention. The Committee is concerned at reports of incidents of threats and violence by vigilante groups, such as Ansari-Hezbollah, directed at persons seeking to exercise or to promote the exercise of these rights.
"The Committee recommends that the State Party establish clear criteria to assess whether a given action or expression is in accordance with interpretations of Islamic texts, and consider appropriate and proportionate means to protect public morals while safeguarding the right of every child to freedom of expression and assembly." (Islamic Republic of Iran CRC/C/15/Add.123, paras. 33 and 34)

When it examined Iran's Second Report, the Committee maintained its concern:

"The Committee remains concerned that, although freedom of expression and of assembly is formally recognized in the Constitution, the protection of this freedom is restricted by the requirement to interpret it

in accordance with Islamic principles without clarifying at the outset the basis on which an action or expression is considered to be in keeping with such principles.
"The Committee reiterates its recommendation, expressed in its previous Concluding Observations, that the State Party establish clear criteria for determining whether a given action or expression is in accordance with Islamic law and the Convention in order to avoid arbitrary interpretations." (Islamic Republic of Iran CRC/C/15/Add.254, paras. 39 and 40)

In some countries, there are laws limiting children's rights to association and peaceful assembly during certain hours – curfews, often imposed to prevent unaccompanied children from being out of their homes after a certain time in the evening and often related to the age of the child. Such blanket restrictions on the child's right do not appear to fall within the very limited restrictions allowed in paragraph 2 of article 15.

The Committee commented to Panama:

"The Committee regrets the lack of specific information about the implementation of the civil rights of children (arts. 13-17). The Committee is also concerned at reports that marginalized poor adolescents have been arrested, ill-treated and/or detained, apparently without legal basis, when gathering together.
"The Committee urges the State Party to provide in its next report specific information about the implementation of these rights and to protect adolescents against illegal arrest, detention and ill-treatment." (Panama CRC/C/15/Add.233, paras. 31 and 32)

Unlike article 14, article 15 makes no reference to respecting the rights of parents to provide direction to the child in the exercise of the child's right in a manner consistent with the evolving capacities of the child, but this principle is upheld generally in article 5 (see page 75). Some States indicated in their Initial Reports that there is an age below which children are not permitted to join associations or to do so without the agreement of their parents. The Convention provides no support for arbitrary limitations on the child's right to freedom of association. The Committee told Japan it was concerned

"... that children below the age of 18 require parental consent to join an association",

and recommended

"... that the State Party review legislation and regulations... in order to ensure the full implementation of articles 13, 14 and 15 of the Convention." (Japan CRC/C/15/Add.231, paras. 29 and 30)

Children with disabilities. A particular emphasis of the World Programme of Action Concerning Disabled Persons has been the promotion of the establishment and development of associations of people with disabilities. The inclusion in the Convention on the Rights of the Child of a specific article on children with disabilities (article 23), as well as the explicit inclusion of "disability" as one of the grounds of discrimination barred by article 2, emphasizes the equal right of children with disabilities to all civil rights, including the right to freedom of association and peaceful assembly. The Convention on the Rights of Persons with Disabilities, adopted in December 2006, requires States to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, and to promote actively an environment in which persons with disabilities can effectively and fully participate, including participation in non-governmental organizations and associations, and forming and joining organizations of persons with disabilities at international, national, regional and local levels (article 29).

Children deprived of their liberty. The rights under article 15 for children deprived of their liberty are emphasized in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which the Committee has promoted as providing appropriate standards for implementation of the Convention. In general, the Rules requires that "Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the restriction of liberty." (Rule 13)

More specifically, the Rules requires that "Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons..." (Rule 59)

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 15, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 15 is relevant to **departments of justice, social welfare, education**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 15 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 15 likely to include the training of **all those working with or for children and their families, and parenting education**)?

• Specific issues in implementing article 15

- ☐ Are the rights of the child to freedom of association and peaceful assembly, as guaranteed in article 15, explicitly recognized in legislation?
- ☐ Have measures been taken to promote opportunities for children to exercise their rights to freedom of association and peaceful assembly?
- ☐ Are the only permitted restrictions on these rights consistent with those set out in paragraph 2 of article 15?
- ☐ Are the only permitted restrictions on these rights defined in legislation?
- ☐ In relation to children in employment, does the State ensure there are no limits on the right of children to form and to join and to leave trades unions?
- ☐ Have special measures been taken to promote the freedom of association and peaceful assembly of children with disabilities?

How to use the checklist, *see page XIX*

- ☐ In relation to children whose liberty is restricted, are rules 13 and 59 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty fulfilled?
- ☐ Is there provision for the consideration and resolution of complaints from children regarding breaches of their rights under article 15?

Reminder: **The Convention is indivisible and its articles interdependent. Article 15 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 15 include:

Article 13: freedom of expression
Article 14: freedom of thought, conscience and religion
Article 29: aims of education
Article 31: child's rights to play, recreation and to participation in cultural life and the arts
Article 32: right of child to join a trade union
Article 37: restriction of liberty and freedom of association

Child's right to privacy

Text of Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 16 provides for the right of every child to be protected by the law against arbitrary or unlawful interference with his or her privacy, family, home or correspondence as well as against unlawful attacks on his honour and reputation.

Like the previous three articles, article 16 applies specifically to the child a fundamental civil right already established for everyone in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Article 12 of the Universal Declaration of Human Rights uses similar wording (but without the qualifying "unlawful" before the words "interference" and "attacks"). The wording in article 17 of the International Covenant on Civil and Political Rights, ensuring that "no one" is subject to such interference, is otherwise identical to the Convention on the Rights of the Child.

Article 16 must apply to all children without discrimination. The child's privacy is to be protected in all situations, including within the family, alternative care, and all institutions, facilities and services. In addition, the article protects the child's family and home from arbitrary or unlawful interference. The article raises issues concerning the physical environment in which the child lives, the privacy of his or her relationships and communications with others, including rights to confidential advice and counselling, control of access to information stored about the child in records or files, and so on. Inevitably, children's rights to privacy within the family vary according to family structures, living conditions and economic and other factors determining the private space available to the child.

In addition to article 16, article 40(2)(b)(vii) requires that a child alleged as or accused of having infringed the penal law should "... have his or her privacy fully respected at all stages of the proceedings"; the Committee on the Rights of the Child has suggested this respect should also apply to children in family proceedings and when children are victims of violence. And the Committee has emphasized the importance of the media respecting children's privacy. ■

Summary

"No child shall be subjected to arbitrary or unlawful interference with his or her privacy ..."

Some concern arose in the Working Group during the drafting of article 16 in regard to the role of parents, but it was ultimately resolved by the inclusion in the Convention of article 5, which requires respect for parents and legal guardians to provide direction and guidance to the child in the exercise by the child of his or her rights, in a manner consistent with the evolving capacities of the child (for example, see E/CN.4/1987/25, pp. 26 and 27; Detrick, p. 258).

Various States have issued declarations or reservations concerning the relationship between parents and their children's civil rights, mentioning article 16. When examining Initial Reports, the Committee has consistently asked for a review and withdrawal of declarations and reservations; in particular, it has expressed concern at reservations that suggest lack of full recognition of the child as a subject of rights. The Committee has expressed concern at the lack of the article's reflection in national legislation, along with other civil rights of the child.

The Committee has welcomed appropriate legislation but noted that additional measures, including for example secondary legislation controlling particular settings, are needed to guarantee the right to privacy in practice:

"In the light of its recommendation (see Nicaragua CRC/C/15/Add.36, para. 34), the Committee welcomes the fact that domestic legislation (Code on Children and Adolescents)... guarantees ... protection of the child's right to privacy (art. 16). However, the Committee remains concerned about the lack of secondary legislation regulating the practical implementation of these rights. The Committee encourages the State Party to continue with its process of legal reform and allocation of appropriate resources in order to establish practical procedures and regulations ... to guarantee [children's] ... right to privacy..." *(Nicaragua CRC/C/15/Add.108, para. 28)*

The Committee on the Rights of the Child has identified certain specific situations in reports that raise issues under article 16. One example is the provision in one State Party which requires the recording of the child's or his or her parent's religion in relation to religious education in school and in other States Parties on children's graduation certificates, identity cards or passports (on which ethnic origin is also recorded):

"The Committee notes that although an opting-out system exists for children wishing to abstain from compulsory religious education, this requires their parents to submit a formal request exposing the faith of the children involved and as such may be felt to be an infringement of their right to privacy... "The Committee suggests that the State Party reconsider its policy on religious education for children in the light of the general principle of non-discrimination and the right to privacy." *(Norway CRC/C/15/Add.23, paras. 9 and 23)*

"The Committee ... further takes note with concern of the requirement to record ethnic origin in passports. "In the field of the right to citizenship, the Committee is of the view that the State Party should, in the light of articles 2 (non-discrimination) and 3 (best interests of the child), abolish the categorization of citizens, as well as mention on the national identity card of the religion and of the ethnic origin of citizens, including children. In the view of the Committee, all possibility of stigmatization and denial of rights recognized by the Convention should be avoided." *(Myanmar CRC/C/15/Add.69, para. 34)*

"The Committee expresses its concern at reports of administrative and social pressures being placed on children from religious minorities including, for example, the requirement that a student's secondary school graduation certificate indicate, where this is the case, that the student does not practise the Greek Orthodox religion. "The Committee recommends that the State Party ensure that a child's religious affiliation, or lack of one, in no way hinders respect for the child's rights, including the right to non-discrimination and to privacy, for example in the context of information included in the school graduation certificate." *(Greece CR/C/15/Add.170, paras. 44 and 45)*

"... It further reiterates the recommendation of the Committee on the Elimination of Racial Discrimination to reconsider the requirement to record ethnic origin in passports (A/54/18, para. 407)." *(Latvia CRC/C/15/ Add.142, paras. 23 and 24)*

When it examined Latvia's Second Report, the Committee

"... welcomed the decision to remove the mandatory requirement to record ethnic origin in passports." *(Latvia CRC/C/LVA/CO/2, para. 28)*

Confidential advice for children

In its General Comment No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child", the Committee addresses the issues of confidentiality and privacy in relation to adolescent health:

"In order to promote the health and development of adolescents, States Parties are also encouraged to respect strictly their right to privacy and confidentiality, including with respect to advice and counselling on health matters (art. 16). Health care providers have an obligation to keep confidential medical information concerning adolescents, bearing in mind the basic principles of the Convention. Such information may only be disclosed with the consent of the adolescent, or in the same situations applying to the violation of an adult's confidentiality. Adolescents deemed mature enough to receive counselling without the presence of a parent or other person are entitled to privacy and may request confidential services, including treatment." *(Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, para. 11)*

The General Comment also asserts adolescents' right to give informed consent to medical treatment:

"With regard to privacy and confidentiality, and the related issue of informed consent to treatment, States Parties should (a) enact laws or regulations to ensure that confidential advice concerning treatment is provided to adolescents so that they can give their informed consent. Such laws or regulations should stipulate an age for this process, or refer to the evolving capacity of the child; and (b) provide training for health personnel on the rights of adolescents to privacy and confidentiality, to be informed about planned treatment and to give their informed consent to treatment." *(CRC/GC/2003/4, para. 33)*

The original *Guidelines for Periodic Reports*, under article 1 (definition of the child), seeks information on any minimum age defined in legislation for the child to have the right to receive "legal and medical counselling without parental consent", and "medical treatment or surgery without parental consent". These involve privacy issues: the right of the child to seek confidential advice on legal and medical matters, and the further right to confidential treatment, including, for example, contraception, and abortion where permitted (see article 1, page 7). The Convention does not support the setting of any arbitrary age below which the child does not have such rights. But article 5 enables parents to provide direction and guidance in a manner consistent with the evolving capacities of the child.

Medical and other professionals often have ethical codes requiring them to respect patient/client confidentiality. When a child is the patient or client, the principles and provisions of the Convention provide a framework for clarifying the child's rights, in particular in relation to his or her parents.

On occasions, the Committee has focused on confidentiality in health services from the child's perspective. For example:

"The Committee remains concerned that the right of access to medical advice and treatment without parental consent, such as testing for HIV/AIDS, may be compromised in instances where the bill for such services is sent to the parents, violating the confidentiality of the doctor-child relationship. The Committee recommends that the State Party take adequate measures to ensure that medical advice and treatment remain confidential for children of appropriate age and maturity, in accordance with articles 12 and 16 of the Convention." *(Netherlands CRC/C/15/Add.114, para. 19)*

The Committee raised privacy concerns over the practice of virginity testing in South Africa:

"... The Committee is also concerned about the traditional practice of virginity testing which threatens the health, affects the self-esteem, and violates the privacy of girls... The Committee also recommends that the State Party undertake a study on virginity testing to assess its physical and psychological impact on girls. In this connection, the Committee further recommends that the State Party introduce sensitization and awareness-raising programmes for practitioners and the general public to change traditional attitudes and discourage the practice of virginity testing in the light of articles 16 and 24(3) of the Convention." *(South Africa CRC/C/15/Add.122, para. 33)*

Protection from interference

In 1988, the Human Rights Committee issued a detailed General Comment on article 17 of the International Covenant on Civil and Political Rights, which concerns the right to privacy. It provides relevant definitions and explanation, in particular that:

- the individual must be protected from interference not only by state authorities but also by others;
- the State must provide legislative and other measures to prohibit such interference;
- interference can only take place in ways defined in law, which must not be arbitrary, must comply with the provisions, aims and objectives of the Covenant, and be reasonable in the particular circumstances;
- the State should enable individuals to complain when they believe their right has been violated and the State should provide appropriate remedies.

The Human Rights Committee emphasizes that States Parties are under a duty themselves not to engage in interference incompatible with article 17 and to provide the legislative framework prohibiting such acts by natural or legal persons. Also, States Parties pay too little attention to the fact that article 17 deals with protection against both unlawful and arbitrary interference: "That means that it is precisely in state legislation above all that provision must be made for the protection of the right set forth in that article... The term 'unlawful' means that no interference can take place except in cases envisaged by the law. Interference authorized by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant.

"The expression 'arbitrary interference' is also relevant to the protection of the right provided for in article 17. In the Committee's view, the expression 'arbitrary interference' can also extend to interference provided for under the law. The introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances."

The Human Rights Committee suggests reports should include information on the authorities and organs set up within the legal system of the State that are "competent to authorize interference allowed by the law": "It is also indispensable to have information on the authorities which are entitled to exercise control over such interference with strict regard for the law, and to know in what manner and through which organs persons concerned may complain of a violation of the right provided for in article 17 of the Covenant. States should in their reports make clear the extent to which actual practice conforms to the law. State Party reports should also contain information on complaints lodged in respect of arbitrary or unlawful interference, and the number of any findings in that regard, as well as the remedies provided in such cases."

The Human Rights Committee notes that "As all persons live in society, the protection of privacy is necessarily relative. However, the competent public authorities should only be able to call for such information relating to an individual's private life the knowledge of which is essential in the interests of society as understood under the Covenant." (Human Rights Committee, General Comment No. 16, 1988, HRI/GEN/1/Rev.8, para. 7, p. 182)

Privacy in institutions

The privacy of children in institutions, in particular in residential institutions and custodial institutions, can be particularly threatened by the physical environment and design, by overcrowding, lack of appropriate supervision and so on. (Indeed, Costa Rica's Initial Report identified the closure of large institutions and orphanages as "an essential step" for the protection of children's privacy (Costa Rica CRC/C/65/Add.7, paras. 122 to 124)). Also, the use of video surveillance in institutions can breach children's privacy rights.

Article 16 requires that the child's right to privacy is protected by law. Hence, in institutions there should be minimum requirements on space, including private space, design of toilets and bathrooms, and so on. These issues are covered in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (see below) and are equally relevant to all institutional placements. Article 3(3) of the Convention on the Rights of the Child requires that institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities (see page 41). Standards must reflect the provisions of the Convention, including the child's right to privacy, without discrimination:

"While noting that the right to privacy of correspondence and telephone conversations is protected in article 27 of the Constitution, the Committee is concerned at the lack of information on rules, regulations and practice regarding the protection of this right, particularly for children in institutions.

"The Committee recommends that the State Party submit specific information on these rules, regulations and practice, and on the procedure for submission and handling of complaints in case of violations of the rights to privacy." *(Uzbekistan CRC/C/UZB/CO/2, paras. 34 and 35)*

The Convention on the Rights of Persons with Disabilities, adopted in December 2006, underlines privacy rights, stating that: "No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

"States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others." (Article 22)

The Committee has raised concerns about searches of children:

"… the Committee is also concerned about reports of children in alternative care being subject to an increasing number of searches of their person and their belongings." (New Zealand CRC/C/15/Add.216, para. 31)

"The Committee is concerned that children's right to privacy is not fully respected, in particular, with regard to the searching of a child's belongings, and the fact that staff in institutions may interfere with a child's personal correspondence.
"The Committee recommends that the State Party:
(a) Ensure the full implementation of a child's right to privacy, including with respect to personal correspondence and searching of personal effects;
(b) Amend the Minimum Standards for Child Welfare Institutions so as to bring them into conformity with article 16 of the Convention." (Japan CRC/C/15/Add.231, paras. 33 and 34)

Privacy for those whose liberty is restricted. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty has various relevant provisions. First, there is the general principle in rule 13 which states that juveniles deprived of their liberty must not be denied any entitlement under national or international law to civil or other rights that are compatible with the deprivation of liberty; in addition, there are specific provisions relating to files (see page 209), design and physical environment, personal effects, visits, correspondence (see page 210) and the conduct of personnel.

The design of detention facilities for juveniles and the physical environment should pay due regard to the juvenile's need for privacy (rule 32); sanitary installations should be so located and of a sufficient standard to enable every juvenile "to comply, as required, with their physical needs in privacy and in a clean and decent manner" (rule 34). Rule 35 states that "The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juveniles. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected..." Circumstances for visits to the juvenile should "respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel" (rule 60). Personnel involved with juveniles deprived of their liberty "should respect the right of the juvenile to privacy and, in particular, should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity" (rule 87(e)).

Privacy in juvenile justice, child protection and other proceedings

In addition to article 16, article 40 requires, in the case of children alleged as or accused of having infringed the penal law, "to have his or her privacy fully respected at all stages of the proceedings" (see page 615).

In its General Comment No. 10 on "Children's rights in Juvenile Justice", the Committee comments in detail on the right to privacy:

"The right of the child to have his/her privacy fully respected in all stages of the proceedings reflects the right to protection of privacy enshrined in article 16. 'All stages of the proceedings' includes from the initial contact with law enforcement (e.g., a request for information and identification) up until the final decision by a competent authority or release from supervision, custody or deprivation of liberty. It is in this particular context meant to avoid harm caused by undue publicity or by the process of labelling. No information shall be published that may lead to the identification of a child offender because of its effect of stigmatization, and possible impact on their ability to obtain an education, work, housing or to be safe. It means that a public authority should be very reluctant with press releases related to offences allegedly committed by children and limit them to very exceptional cases. They must take measures to guarantee that children are not identifiable via these press releases. Journalists who violate the right to privacy of a child in conflict with the law should be sanctioned with disciplinary and when necessary (e.g., in case of recidivism) with penal law sanctions." (Committee on the Rights of the Child, General Comment No. 10, 2007, CRC/C/GC/10, para. 23l)

The Committee notes that in order to protect the privacy of the child, most States Parties have as a rule – sometimes with the possibility of exceptions – that the court or other hearings of a child accused of an infringement of the penal law should take place behind closed doors. This rule allows for the presence of experts or other professionals with the special permission of the court. Public hearings in juvenile justice should only be possible in well-defined cases and with a written decision of the court. Such a decision should be open to appeal by the child.

It recommends that all States Parties should introduce the rule that court and other hearings of a child in conflict with the law should be conducted behind closed doors. Exceptions to this rule should be very limited and be clearly stated in the law. The verdict/sentence should be pronounced

in public at a session of the court in such a way that the identity of the child is not revealed:

"The right to privacy (art. 16) requires all professionals involved in the implementation of the measures taken by the court or another competent authority to keep all information that may result in identification of the child confidential in all their external contacts. Furthermore, the right to privacy also means that the records of child offenders shall be kept strictly confidential and closed to third parties except for those directly involved in the investigation, adjudication and disposition of the case. With a view to avoiding stigmatization and/or prejudgements, records of child offenders shall not be used in adult proceedings in subsequent cases involving the same offender (see the 'Beijing Rules', rules 21.1 and 21.2), or to enhance such future sentencing. The Committee recommends States Parties to introduce rules which would allow for an automatic removal from the criminal records the name of the child who committed an offence upon reaching the age of 18, or for certain limited, serious offences where removal is possible at the request of the child, if necessary under certain conditions (e.g. not having committed an offence within two years after the last conviction)." *(Committee on the Rights of the Child, General Comment No. 10, 2007, CRC/C/GC/10, para. 23 l. See also article 40, page 601.)*

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the "Beijing Rules", expands on the provision in article 40 of the Convention. Rule 8.1 states: "The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling. 2. In principle, no information that may lead to the identification of a juvenile offender shall be published."

The official Commentary to the Rules explains: "Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as 'delinquent' or 'criminal'. Rule 8 also stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle."

Particular protection of the privacy of juveniles is also provided for in article 14 of the International Covenant on Civil and Political Rights, which requires that "any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children" (article 14(1)).

In the outline prepared for its Day of General Discussion on "The child and the media", the Committee noted the importance of the child's right to privacy in media reporting not only of juvenile justice cases but also of child abuse and family problems (see article 17, page 218):

"It is important that the media themselves do not abuse children. The integrity of the child should be protected in reporting about, for instance, involvement in criminal activities, sexual abuse and family problems. Fortunately, the media in some countries have voluntarily agreed to respect guidelines which offer such protection of the privacy of the child; however, such ethical standards are not always adhered to." *(Committee on the Rights of the Child, Report on the eleventh session, January 1996, CRC/C/50, Annex IX, p. 80)*

Among the recommendations that arose during the General Discussion was one that stated specific guidelines should be prepared for reporting on child abuse,

"... on how to report and at the same time protect the dignity of the children involved. Special emphasis should be placed on the issue of not exposing the identity of the child." *(Committee on the Rights of the Child, Report on the thirteenth session, September/October 1996, CRC/C/57, para. 256)*

It has raised these issues with individual States:

"The Committee notes with concern that 'the identity of child offenders, rape victims or children in difficult circumstances continues to be disclosed in the media' (para. 124), which is a clear infringement of article 16 of the Convention.

"The Committee urges the State Party to establish mechanisms to ensure that all materials broadcast in Nepal respect the child's right to privacy such as a code of conduct and/or self-regulation, and to ensure that appropriate human rights training is given to media professionals, paying particular attention to children's rights to privacy." *(Nepal CRC/C/15/Add.261, paras. 45 and 46)*

"The Committee shares the State Party's concern that the privacy of children who have been victims of abuse or in conflict with the law is not always respected by the press, as certain newspapers continue to report cases in a manner that makes it easy to identify the child, publish their photograph and names or make

the child relate the details of the abuse. The Committee also notes that there is no legislation to ensure children's privacy by the media.
"The Committee recommends that the State Party take all necessary legislative measures to fully protect the right of the child to privacy and to support the initiatives of the Ombudsperson for Children in this domain, including the proposals of drafting a Code of Ethics. In addition, the Committee recommends that the State Party provide trainings on the principles and provisions of the Convention to chief editors and journalists." (Mauritius CRC/C/MUS/CO/2, paras. 35 and 36)

"While noting the existence of national legislation which protect children's right to privacy and despite the efforts of the State Party, the Committee notes with concern that the identities and photos of child victims are presented in the media, which is a clear infringement of article 16 of the Convention and of domestic law respecting the privacy of the child.
"The Committee urges the State Party to establish mechanisms such as a code of conduct and/or self-regulation to ensure that all materials broadcast in Thailand respect the child's right to privacy. The Committee also urges the State Party to ensure that appropriate human rights training is given to media professionals, paying particular attention to children's rights to privacy." (Thailand CRC/C/THA/CO/2, paras. 35 and 36)

The public advertising of children for fostering or adoption may raise issues of privacy where it involves using photographs and intimate details of children without their informed consent.

Files on children

Most children have some records or reports written about them and stored – in health, education, social services, and juvenile justice systems (see also article 8 on preservation of the child's identity, page 114). Rights to privacy require that legislation should ensure that the child

- knows of the existence of information stored about him or her;
- knows why such information is stored and by whom it is controlled;
- has access to such records, whether stored manually or by electronic means;
- is able to challenge and, if necessary, correct their content, if necessary through recourse to an independent body.

Legislation should limit who else has access to the information stored; such access must not be arbitrary and must be in line with the whole Convention. The child should know who else has access.

The Human Rights Committee, in its General Comment on the similar article on privacy rights in the International Covenant, states: "The gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law. Effective measures have to be taken by States to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the Covenant. In order to have the most effective protection of his private life, every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request rectification or elimination." (Human Rights Committee, General Comment No. 16, 1988, HRI/GEN/1/Rev.8, para. 10, p. 183)

In relation to files used in juvenile justice systems, the "Beijing Rules" (which the Committee has commended as providing appropriate minimum standards) requires in rule 21(1): "Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand and other duly authorized persons." Rule 21(2): "Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender." The official commentary states: "The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the interests of the juvenile offender (see also rule 8). 'Other duly authorized persons' would generally include, among others, researchers."

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty provides more detail: "All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to

authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged." (Rule 19)

"family"

The term "family" has a broad interpretation under the Convention on the Rights of the Child, including parents "or, where applicable, the members of the extended family or community as provided for by local custom" (article 5), and the Committee has emphasized this interpretation in its examination of States Parties' reports (see article 5, page 76).

In its General Comment on privacy, quoted above, the Human Rights Committee states: "Regarding the term 'family', the objectives of the Covenant require that for purposes of article 17 this term be given a broad interpretation to include all those comprising the family as understood in the society of the State Party concerned..." (Human Rights Committee, General Comment No. 16, 1988, HRI/GEN/1/Rev.8, para. 5, p. 182)

Any arrangements permitting interference with a child's family must be set out in the law and must not be arbitrary, must be compatible with the other principles and provisions of the Convention, and must be reasonable in the particular circumstances. Article 9 is especially relevant, setting out the conditions for any separation of the child from his or her parents. Article 16 extends this to the child's wider family, such as siblings or grandparents, who may be as important to the child. The child must have access to a complaints procedure and appropriate remedies in cases of violation of the right.

Article 37(c) of the Convention specifically requires that the child deprived of his or her liberty "shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances".

"home"

The Human Rights Committee interprets "home" as follows: "The term 'home' in English ... is to be understood to indicate the place where a person resides or carries out his usual occupation". The Human Rights Committee also notes that "Searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment." (Human Rights Committee, General Comment No. 16, 1988, HRI/GEN/1/Rev.8, para. 8, p. 182)

Thus "home" will include, for some children, places of alternative care, including various categories of residential institutions, boarding schools, places of detention, long-stay hospitals and so forth.

Any arrangements permitting interference with a child's home, such as searching it, must be set out in the law and must not be arbitrary, must be compatible with the other principles and provisions of the Convention, and must be reasonable in the particular circumstances. Eviction of a family from its home would have to meet these tests. For children living in alternative care, moves from one "home" to another or closure of an institution must not unreasonably breach the child's right. The child must have access to a complaints procedure and appropriate remedies in cases of violation of the right.

"or correspondence"

All children have the right not to have their correspondence – letters and other forms of communication, including telephone calls – interfered with arbitrarily or unlawfully, in their family or wherever else they may be.

The Committee commented to Austria:

"The Committee is concerned at the information from children and adolescents that their right to privacy, for example, with regard to personal correspondence, is not fully respected in everyday life.
"The Committee recommends that the State Party take the necessary measures, such as awareness-raising and educational campaigns, to improve the understanding of and respect for the child's right to privacy among parents and other professionals working for and with children." *(Austria CRC/C/15/Add.251, paras. 33 and 34)*

Any arrangements permitting interference with a child's correspondence, such as opening, reading, or limiting it and so forth, must be set out in the law and must not be arbitrary, must be compatible with the other principles and provisions of the Convention and must be reasonable in the particular circumstances. The child must have access to a complaints procedure and appropriate remedies in cases of violation of the right.

The Human Rights Committee commented on the privacy article in the Covenant: "Compliance with article 17 requires that the integrity and

confidentiality of correspondence should be guaranteed *de jure* and *de facto*. Correspondence should be delivered to the addressee without interception and without being opened or otherwise read. Surveillance, whether electronic or otherwise, interceptions of telephonic, telegraphic and other forms of communication, wire-tapping and recording of conversations should be prohibited..." (Human Rights Committee, General Comment No. 16, HRI/GEN/1/Rev.8, para. 8, p. 182)

As noted above, under article 37 of the Convention on the Rights of the Child, every child deprived of liberty has the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty states: "Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence." (Rule 61)

"nor to unlawful attacks on his or her honour or reputation"

Most, if not all, countries have laws to protect adults from attacks on their honour or reputation – both verbal attacks (slander) and attacks in writing and/or through the media (libel). This provision requires that the child should be protected equally under the law. The law must set out the protection, and the child must have an effective remedy in law against those responsible.

The Human Rights Committee comments on the identically worded provision in the International Covenant on Civil and Political Rights: "Article 17 affords protection to personal honour and reputation and States are under an obligation to provide adequate legislation to that end. Provision must also be made for everyone effectively to be able to protect himself against any unlawful attacks that do occur and to have an effective remedy against those responsible." (Human Rights Committee, General Comment No. 16, 1988, HRI/GEN/1/Rev.8, para. 11, p. 183)

As noted above, in the report of its 1996 Day of General Discussion on "The child and the media", the Committee on the Rights of the Child expressed concern at images of children – both individual and collective images – portrayed by the media (see also article 17, page 218):

"In their reporting the media give an 'image' of the child; they reflect and influence perceptions about who children are and how they behave. This image could create and convey respect for young people; however, it could also spread prejudices and stereotypes which may have a negative influence on public opinion and politicians. Nuanced and well-informed reporting is to the benefit of the rights of the child..." *(Committee on the Rights of the Child, Report on the eleventh session, January 1996, CRC/C/50, Annex IX, pp. 80 and 81)*

The Committee commented on media attacks on children in Nicaragua:

"The Committee shares the concern expressed by the State Party about the fact that children are often abused in the media to the detriment of their personality and status as minors...
"The Committee recommends that, on an urgent basis, measures be taken to ensure the protection of the child from information and material injurious to his or her well-being and to protect the child's right to privacy, in the light of the provisions of articles 16 and 17 of the Convention." *(Nicaragua CRC/C/15/Add.36, paras. 17 and 34)*

The child's right to the protection of the law against such interference or attacks: article 16(2)

As noted above, in its General Comment, the Human Rights Committee states that interference with the right to privacy can only take place in ways defined in law, which must not be arbitrary, must comply with the provisions, aims and objectives of the Covenant (similarly, in relation to article 16 of the Convention on the Rights of the Child, interference must comply with the principles and provisions of the Convention) and be reasonable in the particular circumstances. In addition the State should enable individuals to complain when they believe their rights have been violated and to have appropriate remedies (Human Rights Committee, General Comment No. 16, 1988, HRI/GEN/1/Rev.8, para. 6, p. 182).

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 16, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 16 is relevant to **departments of social welfare, justice, education, media and communications**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 16 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 16 likely to include the training of **all those working with or for children and their families, and parenting education**)?

• Specific issues in implementing article 16

Does legislation specifically recognize the right of the child to protection from arbitrary or unlawful interference with his or her

- ☐ privacy?
- ☐ family?
- ☐ home?
- ☐ correspondence?
- ☐ Does the legislation conform to all the other principles and provisions of the Convention?

Does legislation prevent such interference

- ☐ by state agencies?
- ☐ by others, including private bodies?

How to use the checklist, *see page XIX*

- ☐ Is the only permitted interference with the child's privacy, family, home and correspondence set out in legislation?

Does the legislation in each case ensure that such interference

- ☐ is not arbitrary?
- ☐ conforms with all other principles and provisions of the Convention?
- ☐ is reasonable in the particular circumstances?

- ☐ Are these legislative protections available to all children without discrimination?

Does the right to protection from arbitrary or unlawful interference with privacy apply to the child

- ☐ in the home?
- ☐ in all forms of alternative care?
- ☐ in schools?
- ☐ in other institutions of all kinds, both state-run and other?

In relation to the child in a residential and/or custodial institution, are there special safeguards of the child's right to privacy in relation to

- ☐ physical environment and design?
- ☐ visits and communication?
- ☐ personal effects?
- ☐ conduct and training of staff?

Does the child have a right to receive confidential counselling without the consent of his/her parents

on legal matters

- ☐ at any age?
- ☐ from a specific age?
- ☐ under criteria related to the child's maturity and capacities?

on medical matters

- ☐ at any age?
- ☐ from a specific age?
- ☐ under criteria related to the child's maturity and capacities?

- ☐ Does legislation protect children from arbitrary and unlawful interference with their family, including members of their extended family?
- ☐ Does legislation protect children from arbitrary and unlawful interference with their home, including placements in alternative care outside the family home?

Do any limits on the right to protection from arbitrary or unlawful interference with the child's correspondence, including by mail, telephone and all other means, conform with the Convention's principles

- ☐ in the child's home?
- ☐ in alternative care?
- ☐ in institutional care?
- ☐ in places of detention?

How to use the checklist, *see page XIX*

Does the child have the following rights in relation to any information kept about him or her in files or records stored either manually or through electronic means:

- ☐ to know of the existence of the information?
- ☐ to know of the purpose of collecting and storing it, and who controls it?
- ☐ to have access to it?
- ☐ to be able to challenge and, if necessary, correct anything contained in it?
- ☐ to know in each case who controls access to the information?
- ☐ to know who else has access to the information and for what purpose(s)?
- ☐ to be able to control who else has access to the information?
- ☐ in the event of any dispute over realization of this right, to appeal to an independent body?

☐ In the event of possible violation of any of these rights, does the child have access to an appropriate complaints procedure?

☐ In cases of violation, does the child have appropriate remedies, including compensation?

☐ Are any limitations on any of these rights of the child based only on age and/or lack of maturity and understanding?

Does legislation guarantee the child's right to privacy, in particular to ensure that nothing which may lead to the child's identification is published in any way, in the case of

- ☐ children alleged as, accused of, or recognized as having infringed the penal law?
- ☐ children involved in child protection investigations and proceedings?
- ☐ children involved in family proceedings?

☐ Is there provision for the consideration and resolution of complaints from children regarding breaches of their rights under article 16?

☐ Does legislation protect the child from unlawful attacks on his or her honour and reputation?

☐ Have appropriate measures been taken to encourage the media to respect children's rights under this article?

How to use the checklist, *see page XIX*

Reminder: **The Convention is indivisible and its articles interdependent. Article 16 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 16 include:

Article 8: preservation of identity
Article 9: privacy in family proceedings
Article 17: role of the media
Article 19: privacy for victims of violence
Article 20: privacy in alternative care
Article 40: not identifying children involved in juvenile justice system

UNICEF/5391/Isaac

Child's access to appropriate information

Text of Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international cooperation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Summary

Article 17 is particularly focused on the role of the mass media in relation to children's rights but includes a general obligation on States Parties to ensure that the child has access to information and material from diverse sources – especially those aimed at promoting well-being and physical and mental health. This is closely linked to the child's right to freedom of expression (article 13), and to maximum development (article 6). The media must be encouraged to disseminate positive material of benefit to the child and in line with the detailed aims for education set out in article 29. The media should also be accessible to the child, promoting and respecting the participatory rights to respect for the views of children (article 12).

The Committee on the Rights of the Child has noted the key role that the media can play in making the principles and provisions of the Convention on the Rights of the Child widely

known to children and adults, in fulfilment of the Convention's article 42. The media can also be crucial in exposing and reporting on breaches of the rights of the child.

During the drafting of the Convention, article 17 started out as a measure simply to protect the child "against any harmful influence that mass media, and in particular the radio, film, television, printed materials and exhibitions, on account of their contents, may exert on his mental and moral development". But early in its discussion, one member of the Working Group suggested that the media did more good than harm and that the article should be phrased in a positive way (E/CN.4/L.1575, pp. 19 and 20, Detrick, p. 279). The final version of the article proposes five actions for States Parties to fulfil in order to achieve the article's overall aim; only the last concerns protecting the child from harmful material, although this is the action that tends to get most attention in the Committee's examination of States' reports. ■

The child and the media

Committee on the Rights of the Child, Day of General Discussion, 1996: recommendations

The following recommendations arose during the plenary and working group sessions of the Day of General Discussion:

1. Child media: A dossier should be compiled on positive, practical experiences of active child participation in the media.
2. Child forum within Internet: The UNICEF-initiated "Voices of Youth" on the World Wide Web should be promoted and advertised as a positive facility for international discussion on important issues among young people.
3. Active child libraries: The experience of dynamic child libraries, or child departments within public libraries, should be documented and disseminated.
4. Media education: Knowledge about the media, their impact and their functioning should be imparted in schools at all levels. Students should be enabled to relate to and use the media in a participatory manner, as well as to learn how to decode media messages, including in advertising. Good experiences in some countries should be made available to others.
5. State support to media for children: There is a need for budgetary support to ensure the production and dissemination of children's books, magazines and papers, music, theatre and other artistic expressions for children, as well as child-oriented films and videos. Assistance through international cooperation should also support media and art for children.
6. Constructive agreements with media companies to protect children against harmful influences: Facts should be gathered about various attempts at voluntary agreements with media companies on positive measures, such as not broadcasting violent programmes during certain hours, clear presentations before programmes about their content and the development of technical devices such as 'V-chips', to help consumers to block out certain types of programmes. Likewise, experiences with respect to the introduction of voluntary ethical standards and mechanisms to encourage respect for them should be assembled and evaluated; this should include an analysis of the effectiveness of existing codes of conduct, professional guidelines, press councils, broadcasting councils, press ombudsmen and similar bodies.
7. Comprehensive national plans to empower parents in the media market: Governments should initiate a national discussion on means to promote positive alternatives to the negative tendencies of the media market, to encourage media knowledge and to support parents in their role as guides to their children in relation to electronic and other media. An international workshop should be organized to promote a discussion on this approach.
8. Advice on implementation of article 17 of the Convention on the Rights of the Child: A study should be conducted with the purpose of developing advice to Governments on how they could encourage the development of "guidelines for the protection of the child from information and

material injurious to his or her well-being." Such a study should also serve the purpose of assisting the Committee on the Rights of the Child in drafting a General Comment on article 17.

9. Specific guidelines for reporting on child abuse: To encourage further discussion in newsrooms and within the media community as a whole, guidelines should be drafted by appropriate journalism bodies on how to report on abuse of children and at the same time protect the dignity of the children involved. Special emphasis should be placed on the issue of not exposing the identity of the child.

10. Material for journalism education on child rights: Material should be produced to assist journalism and media schools on child rights standards; established procedures for child rights monitoring; existing international, regional and national institutions working with children; as well as basic aspects of child development. The manual planned by the Centre for Human Rights of the United Nations as a tool for journalists' education on human rights should be widely disseminated when it is produced.

11. Network for media watchgroups: The positive work of media watchgroups in various countries should be encouraged and good ideas transferred between countries. The purpose is to give media consumers a voice in the discussion on media ethics and children. A focal point for exchanges should be established.

12. Service to "child rights correspondents": Interested journalists should be invited to sign up on a list of "child rights correspondents". They should be provided regularly with information about important child issues and with interesting reports by others, and be seen as media advisers to the international child rights community.

(Committee on the Rights of the Child, Report on the thirteenth session, September/October 1996, CRC/C/57, paras. 242 et seq.*)*

article 17

The "important function performed by the mass media"

In the report of its Day of General Discussion on "The child and the media", the Committee on the Rights of the Child stressed various media roles in relation to full implementation of the Convention on the Rights of the Child, including, but going beyond, the scope of article 17:

"The Committee on the Rights of the Child believes that the media – both written and audiovisual – are highly important in the efforts to make reality [of] the principles and standards of the Convention. The media in many countries have already contributed greatly in creating an awareness of the Convention and its content. The media could also play a pivotal role in monitoring the actual implementation of the rights of the child..."

The Committee also highlighted the importance of children having access to the media:

"Finally, the media is important for offering children the possibility of expressing themselves. One of the principles of the Convention is that the views of children be heard and given due respect (art. 12). This is also reflected in articles about freedom of expression, thought, conscience and religion (arts. 13-14). It is in the spirit of these provisions that children should not only be able to consume information material but also to participate themselves in the media. This requires that there exist media which communicate with children. The Committee on the Rights of the Child has noted that there have been experiments in several countries to develop child-oriented media; some daily newspapers have special pages for children and radio and television programmes also devote special segments for the young audience. Further efforts are, however, needed." *(Committee on the Rights of the Child, Report on the eleventh session, January 1996, CRC/C/50, Annex IX, pp. 80 and 81. For the Committee's comments on the potentially harmful influence of the media,* *see below, page 225.**)*

The Committee returned to this theme in recommendations adopted following its 2006 Day of General Discussion on "The right of the child to be heard":

"The Committee recognizes the essential role played by media in promoting awareness of the right of the child to express their views and urges various forms of media, such as radio and television, to dedicate further resources to including children in the development of programmes and allowing for children to develop and lead media initiatives on their rights." *(Committee on the Rights of the Child,*

Report on the forty-third session, September 2006, Day of General Discussion, Recommendations, para. 36)

Ensuring the child "has access to information ... from a diversity of national and international sources" – especially those aimed at promoting well-being and physical and mental health

The Committee regards article 17 as one of children's civil rights and frequently expresses a general concern at the lack of attention paid to implementation of children's civil rights and freedoms, including those provided by articles 13, 14, 15, 16 and 17.

This section of article 17 provides the overall aim for the five particular strategies outlined in paragraphs (a) to (e). They are related to the child's participation rights under article 12 and the right to freedom of expression under article 13(1), which "shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice" (see page 177). They relate to the role of the media in promoting the child's maximum development under article 6, and also to the aims of education (article 29), and the need for health education (article 24). In addition, article 31 states the right of the child to participate freely and fully in cultural and artistic life, and the State's obligation to encourage the provision of appropriate and equal opportunities; here, too, the media can play an important role (see page 469).

In its General Comment No. 7 on "Implementing child rights in early childhood", the Committee refers to the information needs of young children (and also to the need to protect them from harmful information – see below, page 225):

"... Early childhood is a specialist market for publishers and media producers, who should be encouraged to disseminate material that is appropriate to the capacities and interests of young children, socially and educationally beneficial to their well-being, and which reflects the national and regional diversities of children's circumstances, culture and language. Particular attention should be given to the need of minority groups for access to media that promote their recognition and social inclusion..." *(Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 35)*

The Committee has noted both controls on information, limiting its diversity, and gaps in children's access to appropriate information, sometimes in particular regions, for example rural areas, and has proposed some specific solutions:

"The Committee is concerned that children have poor access to information.
"The Committee recommends that the State Party improve children's access to information, inter alia *by providing greater access to newspapers and libraries, including materials in the Sango language, and to radio..."* *(Central African Republic CRC/C/15/Add.138, paras. 42 and 43)*

"The Committee notes with concern that children living in the outer islands do not have adequate access to information and material from a diversity of national and international sources aimed at promoting the child's development and physical and mental health...
"The Committee recommends that the State Party reinforce measures for the production of programmes and books for children and disseminate them within the country, in particular the outer islands, and in this regard envisage taking steps for the introduction of the use of computers in schools..." *(Marshall Islands CRC/C/15/Add.139, paras. 34 and 35)*

"The Committee is concerned that children and their families who do not speak, read or write Greek fluently, and children from some isolated regions of the State Party and from some distinct ethnic, religious, linguistic or cultural groups do not always have adequate access to information regarding, for example, welfare or legal assistance, and information reflecting the multicultural nature of the State Party...
"The Committee recommends that the State Party:
(a) Make additional efforts to ensure that all children and their families have access to essential information regarding their rights, giving particular attention to isolated groups and those who do not communicate easily in Greek;
(b) Promote the development and accessibility, including through radio and television, of a wide variety of information reflecting the cultural diversity of the State Party's population;..." *(Greece CRC/C/15/Add.170, paras. 46 and 47)*

"The Committee is concerned that:
(a) Children have insufficient access to appropriate information;
(b) Children living in rural communities are particularly disadvantaged;...
"The Committee recommends that the State Party:
(a) Continue and strengthen its efforts to ensure that all children have access to appropriate information, for example through further elaboration of radio programmes for children, the provision of

radios and newspapers for use by groups of children in schools and other contexts, and through itinerant theatre presentations;..." *(Mozambique CRC/C/15/Add.172, paras. 36 and 37)*

"The Committee notes that article 22 of the 1993 Child Law refers to access to information, but is concerned that many children, notably those living in remote and border areas, do not have adequate access to appropriate information.
"In the light of article 17, the Committee recommends that the State Party take all appropriate measures to ensure that all children, in particular those in remote and border areas, are provided with adequate access to information." *(Myanmar CRC/C/15/Add.237, paras. 36 and 37)*

"The Committee expresses concern about the fact that all sources of information – and media in particular – are subject to Government's control and do not allow for diversity. Furthermore, the Committee, sharing the concerns recently expressed by the Committee on the Elimination of Racial Discrimination, regrets that access to foreign culture and media, including the Internet, is very limited.
"The Committee recommends that the State Party, in line with articles 13 and 17 of the Convention, ensure the right of the child to access information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. The State Party should also take steps to expand access to the Internet..." *(Turkmenistan CRC/C/TKM/CO/1, paras. 32 and 33)*

Health promotion

In the Convention on the Rights of the Child, another particular reference to children's need for information appears under article 24, in which States Parties are required to take appropriate measures to ensure that parents and children are informed about child health and various specific health issues (article 24(2)(e)). Here, too, the media can play an important role. The Committee addresses this in two General Comments. In its General Comment No. 4 on "Adolescent health and development in the context of the Convention on the rights of the child", it states:

"Adolescents have the right to access adequate information essential for their health and development and for their ability to participate meaningfully in society. It is the obligation of States Parties to ensure that all adolescent girls and boys, both in and out of school, are provided with, and not denied, accurate and appropriate information on how to protect their health and development and practise healthy behaviours. This should include information on the use and abuse, of tobacco, alcohol and other substances, safe and respectful social and sexual behaviours, diet and physical activity." *(Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, para. 26)*

In its General Comment No. 3 on "HIV/AIDS and the rights of the child", the Committee emphasizes the need for information on prevention and care and information to combat ignorance, stigmatization and discrimination, through both formal channels (e.g., through educational opportunities and child-targeted media) as well as informal channels (e.g., those targeting street children, institutionalized children or children living in difficult circumstances) (General Comment No. 3, 2003, CRC/GC/2003/3, paras. 16 and 17). For further discussion of health information, see article 24, page 359.

Children whose liberty is restricted. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty highlights access to the media: "Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures..." (Rule 62) Special consideration may need to be given to children's access to the media in any institutional placement and in other special circumstances.

"Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29": article 17(a)

Article 29(1) sets out the aims for the education of the child. Article 17 suggests that the content of information and material disseminated by the media should be in accordance with these aims, which are directed to:

- development of the child's personality, talents and mental and physical abilities to their fullest potential;
- development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- development of respect for
  - the child's parents;

- the child's cultural identity, language and values;
- the national values of:
  - the country in which the child is living;
  - the country from which he or she may originate;
- civilizations different from his or her own;

- preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes and friendship among all peoples, ethnic national and religious groups and persons of indigenous origin;

- development of respect for the natural environment.

In its first General Comment on "The aims of education", the Committee notes:

"The media, broadly defined, also have a central role to play both in promoting the values and aims reflected in article 29(1) and in ensuring that their activities do not undermine the efforts of others to promote those objectives. Governments are obligated by the Convention, pursuant to article 17(a), to take all appropriate steps to 'encourage the mass media to disseminate information and material of social and cultural benefit to the child'." *(Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 21. See also article 29, page 439.)*

The Committee has emphasized the responsibility of the media to contribute to fostering "understanding, peace, tolerance" and so on, as set out in article 29(1)(d):

"The Committee also recommends, in the interests of healing and trust-building within the country and in the spirit of article 17 of the Convention, that the State-controlled mass media should play an active role in the efforts to secure tolerance and understanding between different ethnic groups, and that the broadcasting of programmes which would run counter to this objective come to an end." *(Croatia CRC/C/15/Add.52, para. 20)*

When it examined Croatia's Second Report, the Committee re-emphasized this:

"The Committee reiterates its recommendation that the State Party takes measures aimed at developing a culture of tolerance in the society at large through all possible channels, including the schools, the media and the law…
"… the Committee is also concerned with the lack of adequate measures to encourage the mass media to disseminate information which would promote the spirit of understanding of differences.
"The Committee … urges the State Party to disseminate information and material of social and cultural benefit to the child, in line and with the spirit of articles 17 and 29 of the Convention. To that aim, the State Party should provide children with access to diversity of cultural, national and international sources, particularly taking into account the linguistic and other needs of children who belong to a minority group." *(Croatia CRC/C/15/Add.243, paras. 22, 35 and 36)*

In 1978, the General Conference of UNESCO proclaimed the Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War.

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, South Africa, September 2001) in its Declaration expresses deep concern "about the use of new information technologies, such as the Internet, for purposes contrary to respect for human values, equality, nondiscrimination, respect for others and tolerance, including to propagate racism, racial hatred, xenophobia, racial discrimination and related intolerance, and that, in particular, children and youth having access to this material could be negatively influenced by it." (A/CONF.189/12, Declaration, para. 91)

Another of the aims set out in article 29 is promoting equality of the sexes. The report of the Committee's Day of General Discussion on "The girl child" refers to

"… the importance of eradicating degrading and exploitative images of girls and women in the media and advertising. The values and models of behaviour that were portrayed contributed to the perpetuation of inequality and inferiority." *(Committee on the Rights of the Child, Report on the eighth session, January 1995, CRC/C/38, para. 291)*

Under the Convention on the Rights of Persons with Disabilities, adopted in December 2006, States undertake to adopt immediate, effective and appropriate measures to encourage all organs of the media "to portray persons with disabilities in a manner consistent with the purpose of the present Convention" (article 8(2)(c)). The Standard Rules on the Equalization of Opportunities for Persons with Disabilities, in rule 1 on "Awareness-raising", proposes: "States should encourage the portrayal of persons with disabilities by the mass media in a positive way; organizations of persons with disabilities should be consulted on this matter." In addition, rule 9 suggests that the media should be encouraged to play an important part in removing negative

attitudes "towards marriage, sexuality and parenthood of persons with disabilities, especially of girls and women with disabilities, which still prevail in society."

Further advice on the role of the media in the positive socialization of children is given in the United Nations Guidelines for the Prevention of Juvenile Delinquency, the Riyadh Guidelines, which the Committee on the Rights of the Child has consistently commended as providing appropriate standards for implementation of the Convention on the Rights of the Child. Within the section on "Socialization processes", a subsection on the mass media reads:

"40. The mass media should be encouraged to ensure that young persons have access to information and material from a diversity of national and international sources.

41. The mass media should be encouraged to portray the positive contribution of young persons to society.

42. The mass media should be encouraged to disseminate information on the existence of services, facilities and opportunities for young persons in society.

43. The mass media generally, and the television and film media in particular, should be encouraged to minimize the level of pornography, drugs and violence portrayed and to display violence and exploitation disfavourably, as well as to avoid demeaning and degrading presentations, especially of children, women and interpersonal relations, and to promote egalitarian principles and roles.

44. The mass media should be aware of its extensive social role and responsibility, as well as its influence, in communications relating to youthful drug and alcohol abuse. It should use its power for drug abuse prevention by relaying consistent messages through a balanced approach. Effective drug awareness campaigns at all levels should be promoted."

"Encourage international cooperation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources": article 17(b)

This provision reflects a focus on international cooperation to achieve full implementation, found throughout the Convention on the Rights of the Child. It also emphasizes the diversity of material that should be available to the child. Modern technology is dramatically affecting the instant dissemination of information, increasing the potential of the media for education and development, while also raising concerns about the aims and content of some information being made available to children.

"Encourage the production and dissemination of children's books": article 17(c)

Late in the drafting process of article 17, a non-governmental organization proposed that there should be a specific provision to promote children's reading. The International Board on Books for Young People proposed a new subparagraph: "Encourage, at all levels, literacy and the reading habit through children's book production and dissemination, as well as the habit of story-telling" (E/CN.4/1987/25, p. 7; Detrick, p. 287). The provision in subparagraph (c) developed from this proposal.

UNESCO has for many years promoted publication of children's literature, together with the major professional bodies and NGOs.

The Committee commends States which ensure access to books, congratulating Madagascar, for example, on

"... the establishment of a library in all schools" (Madagascar CRC/C/15/Add.218, para. 36)

and Latvia on

"... the measures taken by the State Party to encourage reading among children, in particular, through educational and library programmes." (Latvia CRC/C/LVA/CO/2, paras. 28 and 29)

But it also expresses concern on occasions. For example:

"In the light of articles 13 and 17 of the Convention, the Committee is concerned that the quality and quantity of printed information, including children's books, available to children has decreased in recent years, while at the same time there is a lack of mechanisms to protect children from information and material injurious to their well-being. Furthermore, the Committee is concerned that the amendments to the Media Law may limit access to information.
"The Committee recommends that the State Party take all effective measures, including enacting or reviewing legislation where necessary, to ensure that the child's freedom of expression and the right of access to information is guaranteed and implemented." (Kazakhstan CRC/C/15/Add.213, paras. 34 and 35)

"Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous": article 17(d)

Article 30 (see page 455) requires that the child who belongs to a religious or linguistic minority, or who is indigenous, should not be denied the right to enjoy his or her own culture, to profess and practice his or her own religion or to use his or her own language. The aims of education in article 29 also require respect for varying national values, cultures and languages. Article 17 indicates the important role the mass media should be encouraged to play, for instance through producing material and programmes in minority languages.

In commenting on the need to make the principles and provisions of the Convention on the Rights of the Child well known to adults and children (under article 42, see page 627), the Committee has often emphasized the importance of ensuring translation into minority and indigenous languages, and the particular importance of the media's participation in this task.

Ensuring that children with disabilities have equal access to information through the media may require special and additional arrangements.

The Convention on the Rights of Persons with Disabilities, adopted in December 2006, requires States Parties to it to take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, including by:

"(a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;

(b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;

(c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;

(d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;

(e) Recognizing and promoting the use of sign languages." (Article 21)

The Committee notes in its General Comment No. 9 on "The rights of children with disabilities":

"Access to information and communications, including information and communications technologies and systems, enables children with disabilities to live independently and participate fully in all aspects of life. Children with disabilities and their caregivers should have access to information concerning their disabilities that educates them on the process of disability, including causes, management and prognosis. This knowledge is extremely valuable as it not only enables them to adjust to their disabilities, it also allows them to be involved and make informed decisions regarding their own care. Children with disabilities should also have the appropriate technology and other services and languages, e.g. Braille and sign language, that enables them to access all forms of media, including television, radio and printed material as well as new information and communication technologies and systems, such as the Internet." (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, para. 37. See also article 23, page 321.)

Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18": article 17(e)

Increasing concern exists in many countries about the potential negative effects on children's development, including physical and mental health, of the projection of violence through the mass media. In the report of its General Discussion on "The child and the media", the Committee on the Rights of the Child highlighted this point and other negative aspects of the media:

"... Concern has also been expressed about the influence on children of negative aspects of the media, primarily programmes containing brutal violence and pornography. There is discussion in a number of countries about how to protect children from violence on television, in video films and in other modern media. Again, voluntary agreements have been attempted, with varied impact. This

particular problem is raised in article 17 of the Convention which recommends that appropriate guidelines be developed 'for the protection of the child from information and material injurious to his or her well-being'. "Such guidelines have indeed been developed in some countries, with varied results..." *(Committee on the Rights of the Child, Report on the eleventh session, January 1996, CRC/C/50, Annex IX, pp. 80 and 81)*

In Its General Comment No. 7 on "Implementing child rights in early childhood", the Committee highlights the particular dangers for young children:

"... Rapid increases in the variety and accessibility of modern technologies, including Internet-based media, are a particular cause for concern. Young children are especially at risk if they are exposed to inappropriate or offensive material. States Parties are urged to regulate media production and delivery in ways that protect young children, as well as support parents/caregivers to fulfil their child-rearing responsibilities in this regard (art. 18)." *(Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 35)*

Article 17 proposes guidelines, suggesting voluntary rather than legislative controls. In developing guidelines, States Parties must bear in mind the provisions in two other articles:

- the child's right to freedom of expression, which can only be subject to certain limited restrictions, set out in paragraph 2 of article 13 (see page 180);
- parents' primary responsibility for the upbringing and development of the child, with the child's best interests as their basic concern, and the State's obligation to provide appropriate assistance (article 18, see page 237).

Article 5, requiring respect for parents' rights to provide appropriate direction and guidance consistent with the evolving capacities of the child, is also relevant. Ultimately, it is parents and other caregivers who will have primary responsibility for supervising their child's use of the media. The State should assist parents, for example, by ensuring that they have adequate information about the content of television programmes, videos, computer games, use of the Internet and mobile technology and so on.

The recommendations which arose from the Committee's Day of General Discussion on "The child and the media" include developing constructive agreements with media companies to protect children against harmful influences, comprehensive plans to empower parents in the media market, training of journalists, and specific guidelines for reporting on child abuse (see box, page 218).

The Committee frequently notes the absence of adequate protection from potentially injurious material – including violence, racism and pornography – in its examination of States Parties' reports and it has proposed legislation and guidelines as well as parent education. Its concerns have extended to cover modern information and communications technology, including the Internet and mobile telephones:

"The Committee is concerned that children have easy access to pornographic DVDs sold locally.
"In the light of article 17(e) of the Convention, the Committee recommends that the State Party take all necessary measures to protect children from exposure to harmful information, including pornography..." *(Sao Tome and Principe CRC/C/15/Add.235, paras. 31 and 32)*

"The Committee is concerned at the absence of appropriate laws or guidelines relating to the sale or accessibility of CD-ROMs, video cassettes and games, and pornographic publications facilitating access of a child to information and materials which may be injurious to her or his well-being.
"The Committee recommends that the State Party take necessary measures, including legal ones, to protect children from harmful effects of violence and pornography, in particular, in printed, electronic and audiovisual media." *(France CRC/C/15/Add.240, paras. 27 and 28)*

"While the Committee welcomes the State Party's measures in this respect... it still expresses concern about the exposure of children to violence, racism and pornography, especially through the Internet.
"The Committee recommends that the State Party continue and strengthen its efforts to protect children effectively from being exposed to violence, racism and pornography through mobile technology, video movies, games and other technologies, including the Internet. The Committee further suggests that the State Party develop programmes and strategies to use mobile technology, media advertisements and the Internet to raise awareness among both children and parents on information and material injurious to the well-being of children. The State Party is also encouraged to develop agreements with journalists and media with a view to protecting children from exposure to harmful information in the media and improving the quality of information addressed to them." *(Australia CRC/C15/Add.268, paras. 33 and 34)*

"While welcoming the initiatives undertaken by the Media Council to study children's use

of the Internet and develop a set of 'rules of the road' for such use, the Committee is nevertheless concerned about the amount of unsuitable and illegal material that can be found on the Internet.
"The Committee encourages the State Party to ensure that children are protected from information and material harmful to their well-being, in conformity to article 17(e) of the Convention." (Denmark CRC/C/DNK/CO/3, paras. 29 and 30)

"... While noting that the draft Measures for the Suppression of Provocative Materials Act is pending before the Cabinet, the Committee is concerned that some of the materials published in the media and available through the Internet are harmful to the child. Further, the Committee, while noting the efforts of the Ministry for Information and Communication Technology, expresses its concern that no systematic media-monitoring mechanisms exist at the national and subnational levels to protect children from being exposed to harmful information, such as violence and pornography, transmitted through the media and through the Internet.
"The Committee recommends that, through cooperation with radio and television broadcasters, mechanisms be established to monitor and improve the quality and suitability of media programming produced primarily for children and youth. Further, the Committee recommends, in light of article 17 of the Convention, that the State Party take all necessary legal and other measures, including advisory campaigns directed to parents, guardians and teachers, and cooperation with Internet service providers to protect children from being exposed to harmful material such as violence and pornography, transmitted through the media and Internet." (Thailand CRC/C/THA/CO/2, paras. 37 and 38)

Privacy of the child and the media

One potential threat to the well-being of the child posed by the media relates to the child's right to privacy (see article 16, page 208). In addition, article 40(2)(b)(vii) requires respect in media coverage for the privacy of children involved in the juvenile justice system (see article 40, page 615), and the Committee has raised similar concerns about the privacy of child victims of abuse and of family problems.

Guidelines on witnesses and victims

The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime highlights this in a section on privacy: "Child victims and witnesses should have their privacy protected as a matter of primary importance.

"Information relating to a child's involvement in the justice process should be protected. This can be achieved through maintaining confidentiality and restricting disclosure of information that may lead to identification of a child who is a victim or witness in the justice process.

"Measures should be taken to protect children from undue exposure to the public by, for example, excluding the public and the media from the courtroom during the child's testimony, where permitted by national law." (Economic and Social Council resolution 2005/20, July 2005, section X, paras. 26 to 28)

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 17, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 17 is relevant to **departments of media and communications, social welfare and education**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 17 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 17 likely to include the training of **journalists and all those involved in the mass media, including the Internet, and media education,** and developing appropriate **parenting education)**?

• Specific issues in implementing article 17

- ☐ Has the State taken measures to ensure that all children in the jurisdiction have access to information and material from a diversity of national and international sources, especially those aimed at the promotion of the child's social, spiritual and moral well-being and physical and mental health?

Is such access assured to all children without discrimination, in particular

- ☐ children of minorities and children who are indigenous?
- ☐ children with disabilities?
- ☐ children in all categories of institutions, including custodial institutions?

Has the State encouraged the mass media to disseminate information and material of social and cultural benefit to the child, and to promote aims set out in article 29 including:

- ☐ development of the child's full potential?
- ☐ development of respect for human rights and fundamental freedoms?

How to use the checklist, *see page XIX*

development of respect for
- ☐ the child's parents?
- ☐ the child's cultural identity, language and values?

the national values of
- ☐ the country in which the child is living?
- ☐ the country from which he or she may originate?

- ☐ civilizations different from his or her own?
- ☐ preparation of the child for responsible life in a free society?
- ☐ development of respect for the natural environment?

In particular, has the mass media been encouraged to promote
- ☐ understanding and friendship among all peoples, including minorities and indigenous people?
- ☐ equality between the sexes, in line with the proposals of the Platform for Action of the Fourth World Conference on Women?
- ☐ positive portrayal of people with disabilities, in accordance with the Convention on the Rights of Persons with Disabilities and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities?
- ☐ positive socialization of children, in accordance with the provisions of the United Nations Guidelines on the Prevention of Juvenile Delinquency?

- ☐ Does the State encourage international cooperation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources?
- ☐ Has the State taken measures to encourage the production and dissemination of children's books?
- ☐ Has the mass media been encouraged to have particular regard for the linguistic needs of children who belong to minorities or are indigenous?
- ☐ Has the mass media been encouraged to help with health promotion and education?
- ☐ Has the mass media been encouraged to help disseminate information on the Convention to adults and children?
- ☐ Has the State encouraged the development of guidelines and training programmes to promote the participation of children in relation to radio, print media, film and video, the Internet, and other media?

Has the State encouraged the development of guidelines and monitoring procedures for the protection of the child from information and material injurious to his or her well-being in relation to
- ☐ television?
- ☐ radio?
- ☐ film and video?
- ☐ the Internet?
- ☐ other media?

How to use the checklist, *see page XIX*

If so, are such guidelines consistent with
- ☐ the child's right to freedom of expression under article 13 and the restrictions allowed on that right set out in paragraph 2?
- ☐ the responsibilities of parents and others and of the State set out in article 18?

☐ Has the State ensured that parents and other carers are provided with sufficient information on the content of media programmes, videos, computer games and so on to enable them to fulfil their responsibilities for the welfare of the child?

☐ Has the State promoted the development of appropriate media education for children?

☐ Has the State encouraged the development of parenting education relating to protection of the child from injurious information and material?

☐ Are there guidelines and other safeguards, including training, to promote respect by the media for the child's right to privacy, and for responsible reporting of abuse, family problems and juvenile justice?

Reminder: **The Convention is indivisible and its articles interdependent. Article 17 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 17 include:

Article 5: parental responsibilities and child's evolving capacities
Article 9: reporting on family proceedings – the child's privacy
Article 13: right to freedom of expression
Article 16: the child's right to privacy
Article 18: primary responsibility of parents
Article 19: reporting on violence and abuse – privacy for child victims
Article 24: health education and promotion
Article 29: aims of education
Article 30: rights of children of minorities and of indigenous communities to enjoy their own culture, religion and language
Article 31: promoting child's right to play, recreation and participation in culture and the arts
Article 34: role of the media in challenging sexual exploitation, including child pornography
Article 36: other forms of exploitation by the media
Article 40: reporting on juvenile justice – privacy for child
Article 42: making the Convention widely known to children and adults

UNICEF/HQ96-0245/Toutounji

Parents' joint responsibilities assisted by the State

Text of Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Summary

Article 18 concerns the balance of responsibilities between the child's parents and the State, and particularly emphasizes State support for parents in the performance of their responsibilities. Article 18 must be read in conjunction with article 5 (parental and family duties and rights, the child's evolving capacities) and articles 3(2) and 27 (the State's responsibility to assist parents in securing that children have adequate protection and care and an adequate standard of living). These four articles of the Convention, taken together, make clear that parents have primary responsibility for securing the best interests of the child as their "basic concern", but that this responsibility is circumscribed by the child's rights under the Convention and may be shared with others such as members of the wider family. The State must take appropriate steps to assist parents in fulfilling their responsibilities, and if parents cannot manage this, the State must step in to secure the child's rights and needs.

Article 10 of the International Covenant on Economic, Social and Cultural Rights provides that: "The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children" and "Special measures of protection and assistance should be taken on

behalf of all children and young persons without any discrimination". Articles 23 and 24 of the International Covenant on Civil and Political Rights repeat these principles and, in addition, provide: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence" (article 17). The Committee on Economic, Social and Cultural Rights states in a General Comment: "In this and other contexts, the term 'family' should be interpreted broadly and in accordance with appropriate local usage." (General Comment No. 5, 1994, HRI/GEN/1/Rev.8, para. 30, p. 31)

The requirements of the Human Rights Committee are more detailed: "Responsibility for guaranteeing children the necessary protection lies with the family, society and the State. Although the Covenant does not indicate how such responsibility is to be apportioned, it is primarily incumbent on the family, which is interpreted broadly to include all persons composing it in the society of the State Party concerned, and particularly on the parents, to create conditions to promote the harmonious development of the child's personality and his enjoyment of the rights recognized in the Covenant. However, since it is quite common for the father and mother to be gainfully employed outside the home, reports by States Parties should indicate how society, social institutions and the State are discharging their responsibility to assist the family in ensuring the protection of the child." (Human Rights Committee, General Comment No. 17, 1989, HRI/GEN/1/Rev.8, para. 6, p. 184) ■

"Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child"

Article 18 makes a clear statement supporting the primacy of parents; although elsewhere (articles 5 and 30), the Convention recognizes that family structures vary and that children's wider family, tribe, community or culture can play an important role in the child's upbringing. However, the Committee has expressed concern about social structures in which the parents' role may be diminished to the detriment of children, for example to the Democratic Republic of the Congo:

"The Committee is concerned... at the increasing practice of 'bi-linear' families under which a community leader assumes parental responsibilities for children and that this practice is replacing parents and has a negative impact on children." *(Democratic Republic of the Congo CRC/C/15/Add.143, para. 36)*

It has also asked several countries in Africa and the Middle East to examine the effect of polygamy on children, for example Yemen:

"The Committee... recommends that the State Party undertake an in-depth and comprehensive study on the impact of polygamy with a view to finding out whether polygamy has negative consequences on the upbringing and development of the child and, if so, to develop measures to address those negative impacts." *(Yemen CRC/C/15/Add.267, para. 48)*

In one sense, article 18 seems to be about parents' rather than about children's rights. However the assertion of parents' primacy is made in relation to the State, not the child, and the article is about parental responsibilities rather than rights. Responsibility for the child's 'development' suggests a relatively objective measure for assessing parents' exercise of their responsibilities. Development is an extremely wide concept (see article 6, page 93, article 27, page 395 and article 29, page 440). If a child's physical, psychological or intellectual development is being impaired by the avoidable actions of the parents, then the parents can be found to be failing in their responsibilities.

"The best interests of the child will be their basic concern"

When article 18 was being drafted, the delegate from the United States of America commented that it was rather strange to set down responsibilities for private individuals, since the Convention could only be binding on ratifying governments (E/CN.4/1989/48, pp. 50 to 52; Detrick, p. 270).

The imperative tense used here does at first sight seem odd. How can the State secure that the child's best interests "will be" the parents' basic concern? But the principle does have direct bearing on the actions of States, because they write all legislation on parents' rights. Most nations of the world have a history of laws and customs that assumes parental "ownership" of children – an assumption that parental rights over children could be exercised for the benefit of the parents alone. These laws and customs are now being rethought in many parts of the world. The Convention requires that current legal principles of parental rights be translated into principles of parental responsibilities – the legal responsibility of parents to act in the best interests of their children. The Committee sometimes comments on traditional or paternalistic views of children that

are held by parents and authorities. An extreme example of parental ownership of children was given by Mozambique:

"The Committee remains concerned that… as noted by the State Party in its initial report, 'parents and other family members frequently do not fulfil their obligation to guide the minors under their responsibility' and that weaknesses in family structures have led to the greater vulnerability of children… Children are sometimes used to settle financial and other disputes, with families sending their children to work for periods of time to settle debts…" *(Mozambique CRC/C/15/Add.172, para. 40)*

While sometimes the State can reasonably argue that it cannot control parents, on other occasions its laws are directly responsible for parental neglect – for example, in the Sudan:

"The Committee is concerned that… the severe legal penalties applied to women who become pregnant outside of marriage are such that many women and adolescent girls seek to conceal their pregnancies and then abandon their newborn children, and that the survival rate of these children is extremely low." *(Sudan CRC/C/15/Add.190, para. 37)*

As has been discussed in relation to articles 3 (page 35) and 9 (page 127), "the best interests of the child" are not written on tablets of stone. They will vary from child to child. Parents may have quite different views on what are a particular child's best interests; professionals, too, may not agree with each other about what is best. The child's rights under the Convention are therefore helpful in making the concept less subjective. Any breach of these rights (including failure to respect children's evolving capacities) is likely to be contrary to the child's best interests.

The Committee has addressed rights-based parenting in General Comment No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child" and General Comment No. 7 on "Implementing child rights in early childhood". On the parenting of young children, the Committee encourages States:

"… to construct a positive agenda for rights in early childhood. A shift away from traditional beliefs that regard early childhood mainly as a period for the socialization of the immature human being towards mature adult status is required. The Convention requires that children, including the very youngest children, be respected as persons in their own right. Young children should be recognized as active members of families, communities and societies, with their own concerns, interests and points of view. For the exercise of their rights, young children have particular requirements for physical nurturance, emotional care and sensitive guidance, as well as for time and space for social play, exploration and learning…

"… Situations which are most likely to impact negatively on young children include neglect and deprivation of adequate parenting; parenting under acute material or psychological stress or impaired mental health; parenting in isolation; parenting which is inconsistent, involves conflict between parents or is abusive towards children; and situations where children experience disrupted relationships (including enforced separations)…

"The Committee is concerned that insufficient account is taken of the resources, skills and personal commitment required of parents and others responsible for young children, especially in societies where early marriage and parenthood is still sanctioned as well as in societies with a high incidence of young, single parents. Early childhood is the period of most extensive (and intensive) parental responsibilities related to all aspects of children's well being covered by the Convention: their survival, health, physical safety and emotional security, standards of living and care, opportunities for play and learning, and freedom of expression. Accordingly, realizing children's rights is in large measure dependent on the well being and resources available to those with responsibility for their care." *(Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, paras. 5, 18 and 20. See box on page 242 for summary.)*

And on older children:

"The Committee believes that parents or other persons legally responsible for the child need to fulfil with care their right and responsibility to provide direction and guidance to their adolescent children in the exercise by the latter of their rights. They have an obligation to take into account the adolescents' views, in accordance with their age and maturity, and to provide a safe and supportive environment in which the adolescent can develop. Adolescents need to be recognized by the members of their family environment as active rights holders who have the capacity to become full and responsible citizens, given the proper guidance and direction." *(Committee on the Rights of the Child, General Comment No. 4, CRC/GC/2003/4, para. 7)*

Parent education

The State has a duty to advise and educate parents about their responsibilities. Investment in parent education, on a non-compulsory basis, is increasingly recognized as being cost-effective, for example in terms of lowering children's delinquency rates. The United Nations Guidelines

for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) states: "Measures should be taken and programmes developed to provide families with the opportunity to learn about parental roles and obligations as regards child development and childcare, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community-based activities." (para. 16)

In a General Discussion on "States' role in preventing and regulating separation", the Committee

"... emphasizes the importance to allocate resources for parenting skills rather than resort to separation. The Committee also reminds families and family associations of their very important educative role for other families. It is often easier to address the question of parenting at the peer-to-peer level within communities. The Committee encourages all stakeholders to seek innovative ways and methods to improve parenting skills, including introducing parenting skills training into the school curricula." (Committee on the Rights of the Child, Report on the fortieth session, September 2005, CRC/C/153, para. 646)

The Committee has stressed in its Concluding Observations to many countries the need for parental education measures, for example:

"... Greater efforts should be made to provide family life education and develop awareness of the responsibility of the parents. The Committee encourages non-governmental organizations and children and youth groups to pay attention to the need to change attitudes as part of their advocacy action." (Philippines CRC/C/15/Add.29, para. 22)

"The Committee urges the State Party ... to take immediate preventive measures to avoid separation of children from their family environment by providing appropriate assistance and support services to parents and legal guardians in the performance of their child-rearing responsibilties, including through education, counselling and community-based programmes for parents..." (Lebanon CRC/C/LBN/CO/3, para. 44)

The Committee sees support for parent education as an effective tool for tackling serious social ills, such as the social dislocation following economic transition or armed conflict, but has also stressed its importance in countries with highly developed welfare systems. For example, the Committee observed to Sweden:

"While noting that some municipalities offer family counselling free of charge, and that the fee being charged in other municipalities may not seem too high, the Committee is concerned that a significant number of families find such fees a disincentive to seeking needed help and assistance. The Committee recommends that the State Party review its policies in this regard so as to facilitate access to family counselling services, in particular for the more vulnerable groups." (Sweden CRC/C/15/Add.101, para. 16)

When examining Sweden's Third Report, the Committee regretted that this recommendation had been *"insufficiently addressed"* (Sweden CRC/C/15/Add.248, para. 4).

In its General Comment No. 7 on "Implementing child rights in early childhood", the Committee recommends to States that:

"... (c) Assistance to parents will include provision of parenting education, parent counselling and other quality services for mothers, fathers, siblings, grandparents and others who from time to time may be responsible for promoting the child's best interests;
(d) Assistance also includes offering support to parents and other family members in ways that encourage positive and sensitive relationships with young children and enhance understanding of children's rights and best interests.
"The principle that parents (and other primary caregivers) are children's first educators is well established ... They are expected to provide appropriate direction and guidance to young children in the exercise of their rights, and provide an environment of reliable and affectionate relationships based on respect and understanding (art. 5). The Committee invites States Parties to make this principle a starting point for planning early education, in two respects:
(a) In providing appropriate assistance to parents in the performance of their child rearing responsibilities (art. 18.2), States Parties should take all appropriate measures to enhance parents' understanding of their role in their children's early education, encourage child rearing practices which are child centred, encourage respect for the child's dignity and provide opportunities for developing understanding, self esteem and self confidence;
(b) In planning for early childhood, States Parties should at all times aim to provide programmes that complement the parents' role and are developed as far as possible in partnership with parents, including through active cooperation between parents, professionals and others in developing 'the child's personality, talents and mental and physical abilities to their fullest potential' (art. 29.1(a))." (Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, paras. 20 and 29)

The State shall use its "best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child"

The importance of both parents having common responsibilities for children should be emphasized. Most societies have only recently recognized that fathers, as well as mothers, can and should undertake the day-to-day care of their children, and that mothers, as well as fathers, have financial responsibilities and legal rights in relation to children. The Convention is one of the first treaties to see this as a human right of children, reflecting the provision in the Convention on the Elimination of All Forms of Discrimination against Women (1979), which requires the recognition by States Parties of "… the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases" (article 5).

Countries are encouraged to highlight this principle in their laws and provision of services, as well as their parent education measures:

"The Committee recommends that further measures be undertaken to educate parents about their responsibilities towards their children, including through the provision of family education which should emphasize the equal responsibilities of both parents..." *(United Kingdom CRC/C/15/Add.34, para. 30)*

The Committee regretted that there had been no progress on this at the Second Report *(United Kingdom CRC/C/15/Add.188, para. 4).*

"The Committee is concerned at the large number of children who are not acknowledged by their fathers and the inadequate measures taken to force fathers to be responsible for the welfare of their children.
"… the Committee recommends that the State Party promote parent education and family counselling and take measures to ensure adherence to the principle that both parents have common responsibilities for the upbringing of children." *(Paraguay CRC/C/15/Add.75, paras.19 and 39)*

Single-parent families

Article 27 calls for appropriate measures to ensure that maintenance is recovered from the responsible parent (in practice, generally from fathers), but "common responsibility" under this article goes beyond financial responsibility. The aim should be that both parents play an active part in their child's upbringing, including the fathers of children born outside marriage:

"The Committee recommends that continuing attention be given to the risks of early parenthood and single parenthood, to the promotion of higher levels of involvement of fathers in the upbringing and development of the child, and to the need to provide necessary support to children in these cases." *(Barbados CRC/C/15/Add.103, para. 20)*

Many countries document large numbers of children living in one-parent families – usually with the mother. The Committee has often expressed concern about this phenomenon, a concern that does not relate to the state of marriage but to the need of children to have both parents actively involved in their upbringing and to the greater likelihood of poverty for children in one-parent families. Its causes are various, including those described in Jamaica:

"… The difficult domestic employment situation and its negative influence on the family situation, e.g. the practice of "child shifting" and situations where one or both parents migrate, leaving the children behind..." *(Jamaica CRC/C/15/Add.210, para. 34)*

Or Equatorial Guinea:

"The Committee is concerned … by the fact that less than 50 per cent of children live with both parents due to various factors including urbanization, very-large-scale poverty, the increase of HIV/AIDS, a deterioration of traditional solidarity and a high level of promiscuity." *(Equatorial Guinea CRC/C/15/Add.245, para. 36)*

Countries that do not enable fathers of children born outside marriage to assume parental responsibilities risk being in breach of the Convention (bearing in mind that article 9 allows for parents and children to be separated when necessary for the child's best interests). The Committee made the following proposals to Mongolia:

"The Committee recommends that the State Party take all necessary measures to provide parents and families with the necessary financial and other support to the extent possible, paying attention to single-parent families and families living in particularly difficult circumstances. With regard to the principle that both parents have responsibilities for the upbringing and development of the child, the Committee endorses the recommendation adopted by the Committee on the Elimination of Discrimination against Women in 12001 (A/56/38, paras. 269-270) urging the State Party to develop laws, policies and educational programmes that support and promote the idea of joint parental responsibility." *(Mongolia CRC/C/15/Add.264, para. 32)*

The State should undertake legal reform to end any discrimination against children who are born outside marriage:

"The Committee further recommends that the State Party take all necessary measures, including those of a legal nature, to ensure that the rights of children born of 'visiting' and common law relationships are protected. It is suggested that the State Party seek technical assistance from, inter alia, *UNICEF and WHO."* *(Saint Kitts and Nevis CRC/C/15/Add.104, para. 21)*

The State can also adopt employment, tax and welfare measures to encourage both parents' active involvement in child rearing. The Committee suggested to Iceland, when examining its Initial Report, that

"... appropriate measures be taken to counter the inequalities between men and women with regard to remuneration, since it may be detrimental to the child, in particular in homes headed by a single woman." *(Iceland CRC/C/15/Add.50, para. 25)*

When Iceland submitted its Second Report the Committee welcomed the fact that it had adopted laws to equalize the rights of mothers and fathers (Iceland CRC/C/15/Add.203, para. 30).

The Committee spells out particular concerns relating to teenage mothers. As well as often resulting in lone parenting, teenage pregnancies can blight the health and social expectations of the young mother, who is, of course, a child too under the Convention (see article 24, page 363). The Committee has expressed concern that:

"... The high incidence of teenage pregnancies and female-headed households make children particularly vulnerable to sexual abuse, domestic violence, neglect and abandonment, sometimes leading to children becoming involved in activities conflicting with the law." *(Jamaica CRC/C/15/Add.32, para. 13)*

When parents separate

The inequality of parental responsibility in many countries is often highlighted when parents separate. A number of countries' Initial and Second Reports revealed legal and social traditions that inflexibly allocate responsibility for child-rearing to either the mother or the father when they separate. Often the formula is that mothers are given initial responsibility for babies, infants and young children but that fathers have subsequent responsibility and dominant powers generally, to determine the shape of the child's life. Such measures usually represent some progress away from a totally patriarchal system – recognition of the strong bond between mothers and young children which it would be harmful to sever. Nonetheless translating this recognition into an inflexible law can result in a breach of children's rights. The Convention on the Elimination of All Forms of Discrimination against Women endorses this point, article 5 of which provides that: "States Parties shall take all appropriate measures… to ensure … the recognition of the common responsibility of men and women in the upbringing and development of the children, it being understood that the interest of the children is the primordial consideration in all cases." Article 16 goes on to say: "States Parties… shall ensure, on a basis of equality of men and women…. The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount."

Under the terms of article 18, the law must recognize the principle that parents have **common** responsibility. As is recognized in article 18(2), Government measures should be directed at supporting and promoting the viability of joint parenting. If parents separate, or if they have never lived together, it may however be necessary for courts to allocate rights to one or the other parent. As discussed in relation to article 9 (see page 122) in such circumstances the law should not make inflexible presumptions about which parent takes priority. The Committee has frequently raised concerns about such presumptions, for example to Niger and Pakistan:

"The Committee is concerned at the practice of repudiation of women, which can lead to the separation of the child from his/her mother, and at the custom applicable in divorce cases which holds that children are entrusted to their mothers before they are 7 years old and to their fathers when older, without the views of the child and his/her best interests being taken into account." *(Niger CRC/C/15/Add.179, para. 38)*

"The Committee is concerned that the State Party's legislation uses age limits, instead of the best interests of the child, as criteria in determining custody in case of divorce. Such permission, in addition to implying that siblings being separated, discriminates between the sexes and fails to acknowledge the child's right to express her/his views and have them taken into account." *(Pakistan CRC/C/15/Add.217, para. 44)*

Article 23(4) of the International Covenant on Civil and Political Rights provides that States Parties "shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and on its dissolution". The Human Rights Committee states in a General Comment: "During marriage, the spouses should have equal rights

and responsibilities in the family. This equality extends to all matters arising from their relationship ... Such equality continues to be applicable to arrangements regarding legal separation or dissolution of the marriage ... Thus, any discriminatory treatment in regard to the grounds and procedures for separation or divorce, child custody ... visiting rights or the loss or recovery of parental authority must be prohibited, bearing in mind the paramount interests of the children in this connection." (Human Rights Committee, General Comment No. 19, 1990, HRI/GEN/1/Rev.8, paras. 8 and 9, p. 189)

Germany entered a declaration in relation to article 18(1), which states that this provision does not apply when parents are unmarried or separating "... automatically and without taking into account the best interests of the respective child ... Such an interpretation would be incompatible with article 3(1) of the Convention" (CRC/C/2/Rev.8, p. 22). This is undoubtedly the case, as is made clear by article 9 (see page 122). It should, however, be noted how article 9(3) is phrased: "... the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests." This, together with article 7 (child's right to know and be cared for by parents) and article 18, implies that the law should presume that, unless it is proved to the contrary, the continued involvement of both parents in the child's life is in his or her best interests. Germany has told the Committee that it believes the declaration is unnecessary, and has amended its legislation to provide for shared parental custody when parents are separated or not married. (Germany CRC/C/15/Add.226, paras. 7 and 34)

When the child goes into state care

The Committee has also made clear that, even though the child's care may have to be taken over by the State, this does not mean that parents should automatically lose their legal rights and responsibilities, as for example in Luxembourg:

"The Committee is concerned about the fact that parents automatically lose parental authority over their children when they are placed in foster care or in institutions by the courts, apparently without determining whether such an automatic measure is in the best interests of the child.

"The Committee recommends that the State Party take all possible measures, including revision of the existing legislation, in order to adequately protect parental rights and parent-child relationship and that the transfer of parental authority be used only in exceptional circumstances and in the best interests of the child." (Luxembourg CRC/C/15/Add.250, paras. 34 and 35)

(See article 9, page 121 and article 20, page 277.)

"For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities..."

article 18

Paragraph 2 of article 18 emphasizes the State's responsibility to provide appropriate assistance to parents. It reflects the provisions of article 3(2): "States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures;" and of article 27(3), as regards the child's right to an adequate standard of living: "States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right." (See pages 35 and 397.)

State assistance is obviously appropriate when parents are unable to undertake their child-rearing responsibilities, regardless of whether or not this is their fault. The State should assist families identified as at risk of breaking down with practical measures, such as financial benefits, housing, day care, home helps, equipment and so forth, as well as psychological and professional support. The Committee's Concluding Observations to the Ukraine provide an example:

"The Committee notes with deep concern that, as noted in the State Party's report, family disintegration, including high rates of divorce, growing numbers of single-parent families and cases of parental neglect, is a growing phenomenon. The Committee is further concerned at the growing percentage of families living below the poverty line, and regrets that its previous recommendation that the State Party take further steps to strengthen the system of assistance to both parents in the performance of their child-rearing responsibilities has not been followed-up. Moreover, financial assistance to families has decreased.

"In the light of article 18, the Committee recommends that the State Party:

a) Strengthen its efforts to protect children's right to a secure family environment and

ensure, through a comprehensive new Children's Act, effective protection of children and access by all children and parents in need to financial assistance in this regard;
(b) Take action on the recently drafted social assistance bill designed to restructure the system of social security benefits;
(c) Improve social assistance and support to families through advice and education so as to promote positive child-parent relationships;
(d) Provide adequate training to social workers;
(e) Strengthen preventive measures, such as supporting the role of families and communities, in order to help eliminate the social conditions leading to such problems as delinquency, crime and drug addiction;
(f) Consider increasing financial support for families with children living in poverty…"
(Ukraine CRC/C/15/Add.191, paras. 40 and 41)

But beyond targeting support to families "in need", the article enjoins States to recognize their responsibility to assist all parents. Universal services and non-means-tested financial benefits are a recognition by the State of its responsibility towards, and interest in, children; such services and benefits are an investment in the country's future. In addition, universal provision is often the most effective form of prevention, in that families at risk will automatically receive it, whereas targeted provision may not be taken up by those who most need it because of ignorance, a perceived stigma or complications in making a claim.

"For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall … ensure the development of institutions, facilities and services for the care of children"

Relatively few services fall solely within the scope of this right, since article 20 addresses the responsibility of the State to provide for children who cannot live with their families, including provision of suitable institutions, paragraph (3) of article 18 addresses States' duty to secure child services where parents are working (such as day care for infants and after school facilities for older children), and articles 24, 28 and 23 cover health and education services and services for children with disabilities.

The sorts of services additionally envisaged in article 18(2) include, presumably, community-based initiatives such as centres for mothers with babies and young children, play groups, toy libraries or youth clubs. Additionally, these may contribute to parent education, often on a non-authoritarian basis, and can therefore be of double value to children. Multidisciplinary services such as child guidance or school-based medical staff and advice centres also make an important contribution towards children's care.

Governments often invest in expensive public institutions at the expense of small, locally developed services, although the latter can often be both more economical and more effective in meeting the needs of parents and children. States should be prepared to trust the users of services with capital to develop what they need. It should also be noted that the duty on States under this article is to "ensure the **development** of institutions, facilities and services" which means that the State can never be complacent or inflexible about its delivery of services to children. Constant evaluation of the service's effectiveness is required.

As well as services for young children and particularly day care for working parents (see below), the Committee's General Comment No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child" urges States not to neglect the needs of the parents of older children:

"The Committee calls upon States Parties to develop and implement, in a manner consistent with adolescents' evolving capacities, legislation, policies and programmes to promote the health and development of adolescents by
(a) providing parents (or legal guardians) with appropriate assistance through the development of institutions, facilities and services that adequately support the well-being of adolescents, including, when needed, the provision of material assistance and support with regard to nutrition, clothing and housing (art. 27(3));
(b) providing adequate information and parental support to facilitate the development of a relationship of trust and confidence in which issues regarding, for example, sexuality and sexual behaviour and risky lifestyles can be openly discussed and acceptable solutions found that respect the adolescent's rights (art. 27(3));
(c) providing adolescent mothers and fathers with support and guidance for both their own and their children's well-being (arts. 24(f), 27(2-3));
(d) giving, while respecting the values and norms of ethnic and other minorities, special attention, guidance and support to adolescents and parents (or legal guardians), whose traditions and norms may differ from those in the society where they live; and

State assistance for working parents: United Nations International Conference on Population and Development (Cairo, 1994)

"... The process of rapid demographic and socio-economic change throughout the world has influenced patterns of family formation and family life, generating considerable change in family composition and structure. Traditional notions of gender-based division of parental and domestic functions and participation in the paid labour force do not reflect current realities and aspirations, as more and more women in all parts of the world take up paid employment outside the home. At the same time, widespread migration, forced shifts in population caused by violent conflicts and wars, urbanization, poverty, natural disasters and other causes of displacement have placed greater strains on the family, since assistance from extended family support networks is often no longer available. Parents are often more dependent on assistance from third Parties than they used to be in order to reconcile work and family responsibilities. This is particularly the case when policies and programmes that affect the family ignore the existing diversity of family forms, or are insufficiently sensitive to the needs and rights of women and children...

"Governments, in cooperation with employers, should provide and promote means to facilitate compatibility between labour force participation and parental responsibilities, especially for single-parent households with young children. Such means could include health insurance and social security, day-care centres and facilities for breastfeeding mothers within the work premises, kindergartens, part-time jobs, paid parental leave, paid maternity leave, flexible work schedules and reproductive and child health services." (A/CONF.171/13, p. 32)

article 18

(e) ensuring that interventions in the family to protect the adolescent and, when necessary, separate her/him from the family, e.g. in case of abuse or neglect, are in accordance with applicable laws and procedures. Such laws and procedures should be reviewed to ensure that they conform to the principles of the Convention." *(Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, para. 16)*

"The State shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible"

Day-care services for working parents

The importance of meeting the needs of children of working parents cannot be overestimated. The provisions of article 3(3) (securing the quality of standards of all facilities for children) were originally drafted specifically in reference to child-care services. This reflects widespread concern about childcare for very young children whose developmental needs are for security, consistent individual relationships and one-to-one stimulation. High-quality day-care places are seen as the responsibility of the State:

The Committee has spelled out States' responsibilities in its General Comment No. 7 on "Implementing child rights in early childhood":

"The Committee recommends that States Parties support early childhood development programmes, including home and community based pre-school programmes, in which the empowerment and education of parents (and other caregivers) are main features. States Parties have a key role to play in providing a legislative framework for the provision of quality, adequately resourced services, and for ensuring that standards are tailored to the circumstances of particular groups and individuals and to the developmental priorities of particular age groups, from infancy through to transition into school. They are encouraged to construct high quality, developmentally appropriate and culturally relevant programmes and to achieve this by working with local communities rather by imposing a standardized approach to early childhood care and education." *(Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 31)*

The needs of older children of working parents are also a matter of concern:

"The Committee expresses its concern at the many children in urban areas who are left unattended at home while their parents are at work or pursue leisure activities and notes that, owing to recent and rapid urbanization,

assistance from extended family support networks is not always available...
"The Committee ... urges the State Party to consider developing comprehensive measures to encourage responsible parenthood and to assist needy families with their child-rearing responsibilities, for instance by offering social assistance to families or by securing child-care services and facilities for working parents." *(Marshall Islands CRC/C/15/Add.139, paras. 38 and 39)*

Anxieties about placing young infants in day care must be set against the realities of modern life – the economic demands on families that often require one or both parents to work, the new opportunities for women to work outside the narrow domestic sphere and the break-up of extended families (removing a traditional source of childcare – the grandparent). In this context, high-quality, low-cost or free day care and after-school care are essential to protect the needs of children, as, for example, the Committee pointed out to Nigeria:

"Given the large number of working mothers who require childcare in the State Party, the Committee is concerned with the quality of childcare provided in private and public day-care facilities. The Committee also notes with concern that there are no measures in place to support single parents. The Committee is also concerned by the lack of resources in these facilities to enable full physical, mental and intellectual development of children.
"The Committee recommends that the State Party adopt a programme to strengthen and increase capacities of child-care facilities in the State Party, inter alia, *through the strengthening of existing structures including child-care centres and extended families. The Committee recommends that the appropriate training be given to all professionals working with children in child-care facilities and that sufficient resources are allocated to public child-care facilities. The Committee further urges the State Party to establish standards and procedures, guaranteed in legislation, for alternative care, including in the areas of health, education and safety and in acordance with the principles and provision of the Convention. The Committee recommends that the State Party seek asistance from UNICEF in this regard."* *(Nigeria CRC/C/15/Add.257, paras. 40 and 41)*

Although the needs of pre-school children may not be strictly educational, this recommendation underlines the importance of pre-school facilities that are more than just containment – the development of infants must be actively encouraged by pre-school staff. The World Summit for Children Plan of Action goals include: "Expansion of early childhood development activities, including appropriate low-cost family- and community-based interventions" (World Summit for Children, Declaration and Plan of Action, Appendix, II, E(i)). In its General Comment No. 7 on "Implementing child rights in early childhood", the Committee indicates that day care for older infants and pre-school children is an integral part of their education:

"Research evidence demonstrates the potential for quality education programmes to have a positive impact on young children's successful transition to primary school, their educational progress and their long term social adjustment. Many countries and regions now provide comprehensive early education starting at 4 years old, which in some countries is integrated with childcare for working parents. Acknowledging that traditional divisions between 'care' and 'education' services have not always been in children's best interests, the concept of 'Educare' is sometimes used to signal a shift towards integrated services, and reinforces the recognition of the need for a coordinated, holistic, multisectoral approach to early childhood." *(Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 30)*

At the heart of all childcare must be the rights and best interests of children and, by extension, the rights and interests of their parents. The Committee took the Democratic People's Republic of Korea to task for its utilitarian approach to day care:

"The Committee notes with appreciation the commitment of the State Party to early childcare... However, it is concerned at the exessive degree of State involvement in childcare to the detriment of the parental involvement, hindering psychosocial and cognitive development of children. Of particular concern [is] the widespread practice of leaving children in nurseries from Mondays to Saturdays... Furthermore, the Committee expresses concern over the lack of human and financial resources available for nurseries, which affects the quality of care...
"The Committee notes the State Party's commitment ot early childhood development and the high enrolment rates in nurseries and kindergartens. However, it is concerned that the economic hardships facing the country have negatively affected the quality of services provided by childcare facilities, and that there is no comprehensive strategy to address this problem.
"In the light of article 18, paragraph 1 of the Convention, the Committee recommends that the State Party place greater emphasis on its policies on the primary responsibilities of parents, and to encourage and provide

parents with the necessary support to enable their greater involvement in the nursing and upbringing of their children, reducing the role of the State to a subsidiary and not a primary one.
"The Committee recommends the State Party to promote day-care nurseries and kindergartens and to discourage the use of the 24-hour nursery and kindergarten system (often 5 days a week) to be used by parents only as a last resort. The Committee recommends the State Party to develop a strategy to increase the financial and human resources available for childcare facilities and ensure a basic minimum standards of services for all institutions, in particular with regard to nutrition, heating, water, sanitation and hygiene." (Democratic People's Republic of Korea CRC/C/15/Add.239, paras. 38, 40, 39 and 41)

Employment benefits

Generous maternity and paternity leave and pay and "family-sensitive" working conditions clearly meet the needs of both children and working parents. The International Labour Organization (ILO) has a long-standing commitment to these principles, providing policy support. ILO Recommendation supplementing the Maternity Protection Convention, 2000 (No. 191) expressly supports the principles of article 18. It encourages States to provide parental leave, available to either parent, during a period following the expiry of maternity leave. It recommends that adoptive mothers and fathers have rights to the working benefits to which birth parents are eligible, and that employed fathers are granted leave to care for children in the event of their mothers' sickness or death before the expiration of maternity leave.

The Committee has expressed concern about inadequate leave and benefits to parents, or cutbacks on existing provision, as for example in Kazakhstan:

"The Committee … is concerned that limiting the duration of maternity leave, abolishing family leave, as well as abolishing or failing to pay many benefits to women with small children put extra strain on families.
"In the light of article 18, the Committee recommends that the State Party… promote the family as the best environment for the child and provide counselling and community-based programmes to assist parents to keep children at home… and increase financial support and other benefits for families with children, in particular for those living in poverty." (Kazakhstan CRC/C/15/Add.213, paras. 40 and 41)

It is also vigilant about specific groups of parents who are discriminated against in this respect – for example Roma parents in Greece or migrant parents in Sri Lanka:

"The Committee is concerned… that the system of financial "allowances" provided by the State to assist in the care of children under certain circumstances, such as low family income … that the amount of such financial allowances is extremely low and, in addition, that many Roma families do not receive these allowances at all.
"In the light of article 18, the Committee recommends that the State Party… strengthen its efforts to protect children's right to a family environment, including by reducing the number of persons living in poverty and ensuring accesss for all chldren and parents in need to financial assistance, giving particular attentionin this regard to children and parents from Roma communities…" (Greece CRC/C/15/Add.170, paras. 48 and 49)

"The Committee notes the new programme for children of migrant workers undertaken by the Bureau of Foreign Employment, yet it is concerned that famlies of migrant workers receive little or no assistance with their child-rearing responsibiltiis while they are working abroad.
"The Committee recommends that the State Party develop a comprehensive policy to support the families and caregivers of children of migrant workers in their child-rearing responsibilities…" (Sri Lanka CRC/C/15/Add.207, paras. 30 and 31)

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementing child rights in early childhood

Committee on the Rights of the Child, General Comment No. 7, 2005: summary

This General Comment arises out of the Committee's concern that very little information is supplied by reporting States about early childhood. It aims to strengthen States' understanding of the human rights of young children and to promote States' realization of these rights through policies, laws, programmes, practices, training and research.

The Committee proposes as a working definition of 'early childhood' as the period from birth to the age of eight years (in order to include the child's transition to school).

During this period, children:

- experience their most rapid physical and intellectual growth;
- lay the foundations for their physical and mental health, cultural and personal identity and developing competencies;
- form strong emotional attachments to their parents or carers, from whom they require nurturance, protection and guidance;
- establish relationships with other children, from which they learn social behaviour.

Growth and development will vary according to children's individual nature, as well as their gender, living conditions, care arrangements and education systems, and will be powerfully shaped by cultural beliefs and their role in family and community. A growing body of research confirms the importance of the child's relationships with others, but also reveals significant variations between cultures in their expectations of early childhood. States are encouraged to respect traditional values, provided these uphold children's rights. Implementing these rights in early childhood is an effect way to prevent difficulties during later life.

The general principles

Right to life, survival and development (article 6). States are urged to take all possible measures to improve perinatal care, reduce child mortality and combat malnutrition and preventable diseases. Health and well-being are interdependent: both may be risked by poverty, neglect, abuse and lack of opportunity. The right to survival and development can only be implemented in a holistic manner, through enforcement of the Convention as a whole.

Right to non-discrimination (article 2). Young children are especially at risk of discrimination which may take the form of reduced nutrition, inadequate care, restricted opportunities for play, learning or expressing feelings, harsh or exploitative treatment or unreasonable expectations.

For example, girls may be victims of selective abortion or infanticide, genital mutilation or physical neglect; they may have to undertake excessive responsibilities or be deprived of opportunities to learn. Children with disabilities may be treated less well than other children, although they often require additional assistance in order to realize their rights. Children with or affected by HIV/AIDS may also suffer discrimination from public policies as well as everyday practices. Children are also subject to discrimination because of their parents' ethnic origin, class/caste or beliefs, or because they have been born out of wedlock or because their parents are refugees. States have responsibility for combating discrimination in every form, especially regarding the delivery of health, education and welfare services. They should systematically monitor the availability of these services to all young children and where necessary guarantee equality of access.

Best interests of the child (article 3). Because of their relative immaturity young children are often reliant on parents and the authorities to uphold their best interests. Where legal decisions relating to individual children are concerned, States are urged to arrange for independent representation of the child's best interests. In addition all laws, policies, administration and service provision that directly or indirectly impact on young children must take account of their best interests.

Respect for the views and feelings of young children (article 12). Respect for the young child's agency as a participant in family, community and society is frequently overlooked or rejected. In many places, traditional beliefs emphasize young children's need for socialization, regarding them as lacking even basic capacities for understanding, communicating or making choices and leaving them powerless, voiceless and invisible. The Committee emphasizes that article 12 applies to very young children, who are able to communicate their wishes in many ways before they can write, or even speak. The Committee urges States to take all measures to secure children's right to express views and be consulted from the earliest age. This right should be anchored in daily home life and in the child's community. The adults concerned must adopt a child-centred attitude, listening to and respecting the dignity of young children, and to show patience and creativity in finding ways to communicate appropriate to levels of understanding.

Parents and the State

The family – the variety of arrangements, including the nuclear family and the extended family, made for the nurture of young children – is fundamental to their welfare. Babies and young children form strong mutual attachments with their parents (or primary caregiver) and through these relationships they construct their identity, acquire culturally valued behaviour and realize their rights. Respecting young children's evolving capacities is crucial and is especially important over this period of rapid change. Younger children's greater need for guidance should not be an excuse for authoritarian practices that restrict autonomy and self-expression.

The State should respect the primacy of parents in promoting the child's well-being and support them by reducing circumstances which prevent them from fulfilling their responsibilities. Parenting may impact negatively if parents are under material or psychological stress, are neglectful, abusive or inconsistent, or there is conflict between parents. Development is also threatened if the child is separated from parents, and by low-quality institutional care. Though family structures and sizes will vary, all young children are best provided for within a small number of consistent, caring relationships. Family breakdown, economic pressures forcing parents to work far away, and illness or death will impair these relationships. Parents, particularly young parents, should be supported in their challenging task. Examples of state support include appropriate taxation and benefits, adequate housing, reasonable working hours, perinatal health services, parenting education and provision of health visitors.

State services

Too often early childhood has low priority in government, with services unplanned and uncoordinated, the responsibility of several departments or largely provided by private or voluntary sectors. States are urged to develop rights-based, coordinated, multisectoral strategies which recognize the changing developmental priorities for specific age groups. Staff should be trained in appropriate child-centred practice, socially valued and properly paid. States should ensure that all children, particularly those who are most at risk of discrimination, have access to these services. A first step to securing access is universal birth registration, which may need flexible arrangements (such as mobile registration units or late registration). Another essential strategy is poverty-reduction since growing up in absolute or even relative poverty can have serious consequences for well-being and development.

States should ensure all children have access to the highest attainable standard of **health care**, in particular by ensure access to clean drinking water, adequate sanitation, immunization, good nutrition (including obesity reduction) and medical services. Parents should be educated about the advantages of breastfeeding, nutrition and hygiene. All necessary steps should be taken to prevent HIV/AIDS infection between parents and young children and to provide accurate diagnoses, effective treatment and support for affected parents and children, as well as alternative care for orphaned children.

The Committee notes with appreciation that some States make one year of **pre-school education** freely available to all children. This education should be geared to the aims of education (article 29), child centred and respectful of the dignity of the child. Parents are, of course, their child's

first educators and States should enhance their understanding of this important role. Education programmes should aim to work in partnership with parents. And while pre-school education has been shown to be beneficial for successful transition to school, it should be education in its broadest sense and better integrated with childcare provisions that are used by many working parents.

The Committee recommends support for early childhood **community-based programmes** in which the empowerment of parents is a main feature. States are encouraged to work with local communities in creating high-quality and culturally relevant programmes which build children's confidence and enthusiasm for learning.

The Committee recommends that States support the early years' activities of both the "for profit" and "non-profit" parts of the **non-governmental sector** and ensure that this provision respects the principles of the Convention. The State has primary responsibility and the role of civil society should be complementary to, not a substitute for, the role of the State.

The Committee recommends that States include **human rights education** in early childhood education and care, adapted to the interests and evolving capacities of this age group.

Insufficient attention has been given to the implementation of article 31, guaranteeing the right of children to **rest, leisure and play**. Through play, children enjoy and extend their capacities, yet there is often a shortage of opportunities, particularly in urban environments, for young children to meet and interact in child-centred, secure, supportive, stimulating and stress-free environments. Design of housing, industry and transport, noise, pollution and safety hazards are often obstacles; children's right to play can also be frustrated by their excessive domestic chores or by competitive schooling. States are encouraged to pay greater attention and allocate adequate resources to this right.

Early childhood is a specialist market for publishers and **media** producers, who should be encouraged to disseminate appropriate and beneficial material reflecting national diversities, with particular regard for minority groups. Article 17 calls for States to protect children from harmful material: modern technologies are a new cause for concern in this respect. States are urged to regulate media production and delivery in ways that protect young children.

Young children in need of special protection

The Committee notes that large numbers of young children grow up in circumstances that violate their rights. Young children are less able to recognize or resist harm, particularly when their parents are unable to offer adequate protection. And yet young children, because of their rapid development, are more vulnerable to the effects of such harm. The Committee draws States' attention to some major difficulties that have clear implications for rights in early childhood:

- Young children are frequent victims of abuse and neglect, often within their own families. This can have negative impact on development including measurable effects on brain maturation in young children. States should take all necessary preventive measures and offer non-stigmatizing help to the victims of abuse.
- Children's development can also be jeopardized when they are orphaned, abandoned or otherwise deprived of family care. Research shows that low-quality institutional care can have serious negative consequences for young children, particularly those under three years. Early placement in family-based or family-like care is best and States are encouraged to invest in care that secures opportunities for young children to form long-term attachments, for example through fostering or supported placements within the extended family. Where adoption is envisaged, the best interests of the child must be the "paramount" (not just "primary") consideration.
- Young children who are refugees are most likely to be disorientated, having lost much that is familiar. The Committee offers detailed guidance in General Comment No. 6 on this issue.

- Early childhood is the period during which disabilities are identified. Young children should never be institutionalized on the grounds of disability and States should, as a priority, ensure that these children participate fully in education and community life, by giving them (and their parents) appropriate specialist assistance. Children with disabilities should at all times be treated with dignity and in ways that encourage their self-reliance.
- In some countries, children are socialized to work from an early age, including potentially hazardous or exploitative work, often as part of a family enterprise. Even young babies may be vulnerable, as when they are used for begging. Exploitation of young children in the entertainment industry is also a cause for concern. States have particular responsibilities in relation to the "worst forms of child labour" under ILO Convention (No.182)
- While very young children are unlikely to be substance abusers, they may require specialist care if born to addicted mothers or need protection where family members are abusers.
- Young children, especially girls (for example those employed as domestic workers) are vulnerable to early sexual abuse, and may also be victims of producers of pornography.
- The Committee has frequently expressed concern about the sale and trafficking of abandoned and separated children, for purposes including adoption, child prostitution and child labour. States are urged to ratify the Optional Protocol on the sale of children, child prostitution and child pornography and the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.
- Under no circumstances should young children be included in legal definitions of criminal responsibility. Those who violate laws require sympathetic help and understanding, with the goal of increasing their capacities for personal control, social empathy and conflict resolution.

In all of these circumstances States should support measures for the physical, psychological and social recovery of child victims.

Capacity-building

States are urged to adopt comprehensive, strategic and time-bound plans for early childhood. This requires an increase in human and financial **resources**. The Committee acknowledges the difficulties that some States have in this regard, but it is nonetheless important there is sufficient investment in early childhood for the reasons already stated. States are encouraged to develop partnerships with public services, NGOs, the private sector and families. Where services are decentralized, this should not be to the disadvantage of young children.

The Committee is aware that States lack adequate national **data collection** systems and urges them to develop indicators disaggregated by gender, age, family structure, and urban and rural residence.

The Committee also encourages more **research** into early childhood as evidence has much to offer in the development of policies and practices. It notes that available research is limited to certain regions and contexts, and does not sufficiently address children's rights, particularly their participatory rights.

States Parties are encouraged to provide systematic child rights **training** for children, their parents and all professionals and administrators working with them or for them. States are also urged to conduct awareness-raising campaigns for the public.

The Committee recommends that donor institutions, including the World Bank and other United Nations bodies, support early childhood development programmes and make them a main target for **international assistance.**

(Committee on the Rights of the Child, General Comment No. 7, "Implementing child rights in early childhood", 2005, CRC/C/GC/7/Rev.1. For full text see www.ohchr.org/english/bodies/crc/comments.htm.)

Implementation Checklist

article 18

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 18, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 18 is relevant to **the departments of tax and finance, social security, social welfare, employment and education**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 18 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 18 likely to include the training of **social workers, child guidance staff, community workers, social security officers and those engaged in parent education**)?

• Specific issues in implementing article 18

- ☐ Does legislation support parents' primacy of responsibility for children's upbringing and development?
- ☐ Is parental responsibility defined in legislation?
- ☐ Does legislation make clear that the exercise of parental responsibility has the best interests of the child as its basic concern?
- ☐ Are parents provided with education programmes on the exercise of their responsibilities?
- ☐ Are laws, administrative systems, tax and welfare measures and public education aimed at supporting both parents' common responsibilities for, and active participation in, their child's upbringing?
- ☐ Does the law enable fathers of children born outside marriage to assume parental rights and responsibilities (compatible with the child's best interests)?
- ☐ Is there a presumption in law that children's best interests, unless proved to the contrary, are in maintaining contact with both parents?

How to use the checklist, *see page XIX*

- ☐ When parents separate, does legislation ensure that the grounds for allocating parental responsibility are based on the individual child's best interests?

Are all parents provided with the following assistance where necessary:

- ☐ financial support?
- ☐ housing?
- ☐ appropriate child-care equipment?
- ☐ day care and respite care?
- ☐ advice and counselling?

- ☐ Is good quality day care available for all working parents?
- ☐ Are parents of children with disabilities provided with appropriate additional forms of assistance?
- ☐ Are parents with disabilities provided with appropriate additional forms of assistance?
- ☐ Are mothers entitled to maternity leave?
- ☐ Are fathers entitled to paternity leave?
- ☐ Are fathers entitled to leave if the mother is sick or dies before the expiration of her maternity leave?
- ☐ Are adoptive parents entitled to parental leave at the outset of the adoption?
- ☐ Are parents entitled to take leave if their child is sick?
- ☐ Does the State pay for parental leave where necessary?
- ☐ Does the State encourage employment conditions which assist working parents in the exercise of their parental responsibilities?

Reminder: **The Convention is indivisible and its articles interdependent. Article 18 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 18 include:

Article 5: parental responsibilities and child's evolving capacities
Article 7: child's right to know and be cared for by parents
Article 9: non-separation from parents except in child's best interests
Article 10: family reunification
Article 16: protection from arbitrary interference with privacy, family and home
Article 27: duty of parents and State to secure an adequate standard of living for the child

UNICEF/Noorani

Child's right to protection from all forms of violence

Text of Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 19 goes beyond children's rights to protection from what is arbitrarily defined as "abuse" in different societies, and beyond their right to protection, guaranteed under article 37, from torture and cruel, inhuman or degrading treatment or punishment; article 19 requires children's protection from "all forms of physical or mental violence" while in the care of parents or others. Thus, article 19 asserts children's equal human right to full respect for their dignity and physical and personal integrity. As a principle, it is linked to the right to life and to maximum survival and development guaranteed under article 6 (see page 83).

Article 19 requires States to take a variety of measures – legislative, administrative, social and educational – to protect children from all forms of violence. Paragraph 2 sets out possible protective measures, acknowledging that social and educational measures, and in particular the provision of appropriate support to children and families, are relevant to the protection of the child from violence, abuse and exploitation. The Committee has consistently interpreted the Convention as requiring prohibition and other measures to end all corporal punishment and other cruel or degrading punishment or treatment of children, and it confirmed this in a detailed General Comment issued in 2006 (CRC/C/GC/8).

Growing awareness exists in all countries of the extent of violence against children in their homes, in institutions and in the community. Only in the last few decades has the prevalence of deliberate violence to children by parents and other caregivers been widely acknowledged. More recently "discovered" is the widespread sexual abuse of children in the family and in institutions, and also

Summary

organized sexual abuse, including "sex tourism" and other forms of sexual exploitation (the obligation to protect children from sexual exploitation is further expanded in article 34 (see page 513) and in the Optional Protocol on the sale of children, child prostitution and child pornography (see page 669). Along with growing knowledge of the prevalence of violence to children has come growing awareness, through research, of its dangers and of the links between childhood experience of violence and violent and other anti-social behaviour in childhood and later life.

The Committee decided to devote two Days of General Discussion to violence against children, in September 2000 on "State violence against children" and in September 2001 on "Violence against children, within the family and in schools". One key recommendation proposed that the Secretary-General of the United Nations should be requested, through the General Assembly, to carry out an in-depth international study on violence against children. The proposal was adopted by the General Assembly in November 2001, and the study was completed and a report presented to the General Assembly in October 2006. ■

A global movement to end violence against children

Under the Convention on the Rights of the Child, the State is responsible for the prevention of all forms of violence against children, whether perpetrated by State officials or by parents, other carers, teachers or other children. From its earliest days the Committee has devoted considerable attention to challenging violence against children. Following its 2000 and 2001 Days of General Discussion on the issue, it adopted very detailed recommendations (see box, page 270; also www.ohchr.org/english/bodies/crc/discussion.htm). The Committee has highlighted throughout that all forms of violence against children, however light, must be prohibited, with prohibition supported by awareness-raising, sensitization and training. In recommendations adopted following its 2001 Day of General Discussion on "Violence against children within the family and in schools", the Committee emphasizes that this is a human rights obligation, and calls for non-violent relationships based on the human rights of all within the family and schools:

"The Committee recommends that an alternative vision of a school and a family where the rights and dignity of all are respected including children, parents and teachers should guide all actions on the issue of violence against children. The main strategy should be to galvanise actions around this vision rather than using punitive measures. In this vision relations between and among children and parents or teachers (as well as other family members or students) are mutually respectful and the safety and security of all is promoted.

"The Committee considers that violence against children is unacceptable under any circumstances, in accordance with the provisions of the Convention on the Rights of the Child..." (Committee on the Rights of the Child, Report on the twenty-eighth session, September 2001, CRC/C/111, paras. 2 and 3)

And the Committee goes on to emphasize the critical importance of direct involvement of children themselves:

"In conceptualizing violence, the Committee recommends that the critical starting point and frame of reference be the experience of children themselves. Therefore children and young people must be meaningfully involved in promoting and strategizing action on violence against children." (CRC/C/111, para. 4)

The Committee recognizes that

"... different forms of violence against children (such as corporal punishment, bullying, sexual harassment and abuse, and verbal and emotional abuse) are interlinked, and that violence in the family and school contexts reinforce one another. Action against violence therefore must take a holistic approach and emphasise non-tolerance of all forms of violence. Physical violence and other more severe forms of violence are more likely where everyday harassment is tolerated. Tolerance of violence in one sphere makes it difficult to resist it in another." (CRC/C/111, para. 6)

After each of its Days of General Discussion, the Committee recommended that the Secretary-General should be requested, through the General Assembly, to conduct an in-depth international study into violence against children. The General Assembly accepted the proposal in 2001 (in its resolution 56/138) and, in 2003, Professor Paulo Sérgio Pinheiro was appointed by the Secretary-General to lead the study on violence against children. His report, submitted to the General Assembly in 2006, and the accompanying more comprehensive book, *World Report on Violence against Children*, echo the Committee's "zero-tolerance" approach. The Study process included nine substantial regional consultations, held during 2005, expert seminars, a detailed questionnaire sent to States by Professor Pinheiro and responded to by over 130 governments (for responses, see www.ohchr.org/english/bodies/crc/study.htm) and many submissions from organizations and individuals, including children.

Report of the independent expert for the United Nations study on violence against children – principles and recommendations

The overarching recommendations of the independent expert, Professor Paulo Sérgio Pinheiro, are prefaced by this set of principles:

(a) "No violence against children is justifiable. Children should never receive less protection than adults;

(b) All violence against children is preventable. States must invest in evidence-based policies and programmes to address factors that give rise to violence against children;

(c) States have the primary responsibility to uphold children's rights to protection and access to services, and to support families' capacity to provide children with care in a safe environment;

(d) States have the obligation to ensure accountability in every case of violence;

(e) The vulnerability of children to violence is linked to their age and evolving capacity. Some children, because of gender, race, ethnic origin, disability or social status, are particularly vulnerable;

(f) Children have the right to express their views, and to have these views taken into account in the implementation of policies and programmes."

The report includes a set of overarching recommendations, summarized below, and also more detailed settings-related recommendations:

Overarching recommendations

"1. Strengthen national and local commitment and action

- I recommend that all States develop a multifaceted and systematic framework to respond to violence against children which is integrated into national planning processes. A national strategy, policy or plan of action on violence against children with realistic and time-bound targets, coordinated by an agency with the capacity to involve multiple sectors in a broad-based implementation strategy, should be formulated…

2. Prohibit all violence against children

- I urge States to prohibit all forms of violence against children, in all settings, including all corporal punishment, harmful traditional practices, such as early and forced marriages, female genital mutilation and so-called honour crimes, sexual violence and torture and other cruel, inhuman or degrading treatment or punishment.

- I urge States to ensure that no person below 18 years of age is subjected to the death penalty or a sentence of life imprisonment without possibility of release…

3. Prioritize prevention

- I recommend that States prioritize preventing violence against children by addressing its underlying causes. Just as resources devoted to intervening after violence has occurred are essential, States should allocate adequate resources to address risk factors and prevent violence before it occurs.

4. Promote non-violent values and awareness-raising

- I recommend that States and civil society should strive to transform attitudes that condone or normalize violence against children, including stereotypical gender roles and discrimination, acceptance of corporal punishment, and harmful traditional practices. States should ensure that children's rights are disseminated and understood, including by children. Public information campaigns should be used to sensitize the public about the harmful effects that violence has on children…

5. Enhance the capacity of all who work with and for children

- I recommend that the capacity of all those who work with and for children to contribute to eliminate all violence against them must be developed. Initial and in-service training which imparts knowledge and respect for children's rights should be provided. States should invest in systematic education and training programmes both for professionals and non-professionals who work with or for children and families to prevent, detect and respond to violence against children…

6. Provide recovery and social reintegration services

- I recommend that States should provide accessible, child-sensitive and universal health and social services, including pre-hospital and emergency care, legal assistance to children and, where appropriate, their families when violence is detected or disclosed. Health, criminal justice and social service systems should be designed to meet the special needs of children.

7. Ensure participation of children

- I recommend that States actively engage with children and respect their views in all aspects of prevention, response and monitoring of violence against them, taking into account article 12 of the Convention on the Rights of the Child. Children's organizations and child-led initiatives to address violence, guided by the best interests of the child, should be supported and encouraged.

8. Create accessible and child-friendly reporting systems and services

- I recommend that States should establish safe, well-publicized, confidential and accessible mechanisms for children, their representatives and others to report violence against children. All children, including those in care and justice institutions, should be aware of the existence of mechanisms of complaint. Mechanisms such as telephone helplines, through which children can report abuse, speak to a trained counsellor in confidence and ask for support and advice, should be established and the creation of other ways of reporting violence through new technologies should be considered.

9. Ensure accountability and end impunity

- I recommend that States should build community confidence in the justice system by, *inter alia*, bringing all perpetrators of violence against children to justice and ensure that they are held accountable through appropriate criminal, civil, administrative and professional proceedings and sanctions. Persons convicted of violent offences and sexual abuse of children should be prevented from working with children.

10. Address the gender dimension of violence against children

- I recommend that States should ensure that anti-violence policies and programmes are designed and implemented from a gender perspective, taking into account the different risks facing girls and boys in respect of violence…

11. Develop and implement systematic national data collection and research

- I recommend that States improve data collection and information systems in order to identify vulnerable subgroups, inform policy and programming at all levels, and track progress towards the goal of preventing violence against children… Where not currently in place, birth, death and marriage data registries with full national coverage should be created and maintained. States should also create and maintain data on children without parental care and children in the criminal justice system. Data should be disaggregated… States should also develop a national research agenda on violence against children across settings where violence occurs, including through interview studies with children and parents…

12. Strengthen international commitment

- I recommend that all States should ratify and implement the Convention on the Rights of the Child and its two Optional Protocols on the involvement of children in armed conflict and on

the sale of children, child prostitution and child pornography. All reservations that are incompatible with the object and purpose of the Convention and the Optional Protocols should be withdrawn… States should ratify all relevant international and regional human rights instruments that provide protection for children… States should implement all their international legal obligations and strengthen their cooperation with the treaty bodies.

- I recommend that States act in conformity with their commitments on the prevention of violence made at the special session of the General Assembly on children and in the context of the WHO Health Assembly resolution 76 on implementing the recommendations of the *World Report on Violence and Health* and other regional public health resolutions that reinforce this resolution."

(*Report of the independent expert for the United Nations study on violence against children, United Nations, General Assembly, sixty-first session, August 2006, A/61/299, paras. 93 and 96 to 109)*

article 19

The report's key message is: "No violence against children is justifiable; all violence against children is preventable." Its introduction continues: "Yet the in-depth study on violence against children confirms that such violence exists in every country of the world, cutting across culture, class, education, income and ethnic origin. In every region, in contradiction to human rights obligations and children's developmental needs, violence against children is socially approved, and is frequently legal and state-authorized.

"The Study should mark a turning point – an end to adult justification of violence against children, whether accepted as 'tradition' or disguised as 'discipline'. There can be no compromise in challenging violence against children. Children's uniqueness – their potential and vulnerability, their dependence on adults – makes it imperative that they have more, not less, protection from violence.

"Every society, no matter its cultural, economic or social background, can and must stop violence against children… Protection of children from violence is a matter of urgency. Children have suffered adult violence unseen and unheard for centuries. Now that the scale and impact of all forms of violence against children is becoming better known, children must be provided with the effective prevention and protection to which they have an unqualified right." (Report of the independent expert for the United Nations study on violence against children, General Assembly, sixty-first session, August 2006, A/61/299, paras. 1 to 3 and 6. For full report see www.violencestudy.org/IMG/pdf/English.pdf; for *World Report on Violence against Children*, see www.violencestudy.org.)

The report includes a set of overarching principles and recommendations (see box opposite), as well as more detailed settings-specific recommendations; sections of the report and of the *World Report on Violence against Children* review violence in the different settings of children's lives: the home and family, schools, care and justice systems, the workplace and the community. The report also sets certain timebound targets, including that States should prohibit all violence against children by 2009.

Since September 2006, the Committee has consistently followed up the United Nations Secretary-General's Study and its recommendations when it examines States' reports. For example:

"In the context of the Secretary-General's in-depth study on the question of violence against children and the related questionnaire to Governments, the Committee acknowledges with appreciation the written replies of the State Party and its participation in the Regional Consultation for Latin America held in Argentina between 30 May-1 June 2005. The Committee recommends that the State Party use the outcome of this regional consultation in order to take action, in partnership with civil society, to ensure the protection of every child from all forms of physical or mental violence, and to generate momentum for concrete and, where appropriate, time-bound actions to prevent and respond to such violence and abuse."
(Colombia CRC/C/COL/CO/3, para. 60)

Following its Days of General Discussion, the Committee indicated that it would adopt a series of General Comments on violence against children. In 2006, it issued the first, on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28(2) and 37, *inter alia*)", explaining:

"The Committee aims to guide States Parties in understanding the provisions of

the Convention concerning the protection of children against all forms of violence. This general comment focuses on corporal punishment and other cruel or degrading forms of punishment, which are currently very widely accepted and practised forms of violence against children.
"The Convention on the Rights of the Child and other international human rights instruments recognize the right of the child to respect for the child's human dignity and physical integrity and equal protection under the law. The Committee is issuing this general comment to highlight the obligation of all States Parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children and to outline the legislative and other awareness-raising and educational measures that States must take."
(Committee on the Rights of the Child, Report on the forty-second session, May/June 2006, CRC/C/GC/8, paras. 1 and 2. See summary, page 272.)

In other General Comments, the Committee has highlighted the particular vulnerability of certain groups of children to violence (see page 258).

A World Fit for Children: recommendations on violence

In the outcome document of the United Nations General Assembly's special session on children, *A World Fit for Children,* States made detailed commitments to end violence against children (see below). (Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1; see also www.unicef.org/specialsession/docs_new/documents/A-RES-S27-2E.pdf).

A world fit for children – without violence

Extracts from Plan of Action of outcome document of the 2002 United Nations General Assembly's special session on children

"Children have the right to be protected from all forms of abuse, neglect, exploitation and violence. Societies must eliminate all forms of violence against children. Accordingly, we resolve to:

(a) Protect children from all forms of abuse, neglect, exploitation and violence;

(b) Protect children from the impact of armed conflict and ensure compliance with international humanitarian law and human rights law;

(c) Protect children from all forms of sexual exploitation including paedophilia, trafficking, and abduction;

(d) Take immediate and effective measures to eliminate the worst forms of child labour as defined in International Labour Organization Convention No.182, and elaborate and implement strategies for the elimination of child labour that is contrary to accepted international standards;

(e) Improve the plight of millions of children who live under especially difficult circumstances.

"To achieve these goals, we will implement the following strategies and actions:

General protection

1. Develop systems to ensure the registration of every child at or shortly after birth, and fulfil his or her right to acquire a name and a nationality, in accordance with national laws and relevant international instruments.
2. Encourage all countries to adopt and enforce laws, and improve the implementation of policies and programmes to protect children from all forms of violence, neglect, abuse and exploitation, whether at home, in school or other institutions, in the workplace, or in the community.
3. Adopt special measures to eliminate discrimination against children on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status and ensure their equal access to education, health and basic social services.
4. End impunity for all crimes against children by bringing perpetrators to justice and publicizing the penalties for such crimes.

5. Take steps with a view to the avoidance of and refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that impedes the full achievement of economic and social development by the population of the affected countries, in particular children and women, that hinders their well-being and that creates obstacles to the full enjoyment of their human rights, including the right of everyone to a standard of living adequate for their health and well-being and their right to food, medical care and the necessary social services. Ensure that food and medicine are not used as tools for political pressure.
6. Raise awareness about the illegality and harmful consequences of failing to protect children from violence, abuse and exploitation.
7. Promote the establishment of prevention, support and caring services as well as justice systems specifically applicable to children, taking into account the principles of restorative justice and fully safeguard children's rights and provide specially trained staff that promote children's reintegration in society.
8. Protect children from torture and other cruel, inhuman or degrading treatment or punishment. Call upon the Governments of all States, in particular States in which the death penalty has not been abolished, to comply with the obligations they have assumed under relevant provisions of international human rights instruments, including in particular articles 37 and 40 of the Convention on the Rights of the Child and articles 6 and 14 of the International Covenant on Civil and Political Rights.
9. End harmful traditional or customary practices, such as early and forced marriage and female genital mutilation, which violate the rights of children and women.
10. Establish mechanisms to provide special protection and assistance to children without primary caregivers.
11. Adopt and implement policies for the prevention, protection, rehabilitation and reintegration, as appropriate, of children living in disadvantaged social situations and who are at risk, including orphans, abandoned children, children of migrant workers, children working and/or living on the street and children living in extreme poverty, and ensure their access to education, health, and social services as appropriate.
12. Protect children from adoption and foster care practices that are illegal, exploitative or that are not in their best interest.
13. Address cases of international kidnapping of children by one of the parents.
14. Combat and prevent the use of children, including adolescents, in the illicit production of and trafficking in narcotic drugs and psychotropic substances.
15. Promote comprehensive programmes to counter the use of children, including adolescents, in the production and trafficking of narcotic drugs and psychotropic substances.
16. Make appropriate treatment and rehabilitation accessible for children, including adolescents, dependent on narcotic drugs, psychotropic substances, inhalants and alcohol.
17. Provide protection and assistance to refugees and internally displaced persons, the majority of whom are women and children, in accordance with international law, including international humanitarian law.
18. Ensure that children affected by natural disasters receive timely and effective humanitarian assistance through a commitment to improved contingency planning and emergency preparedness, and that they are given all possible assistance and protection to help them resume a normal life as soon as possible.
19. Encourage measures to protect children from violent or harmful web sites, computer programmes and games that negatively influence the psychological development of children, taking into account the responsibilities of the family, parents, legal guardians and caregivers."

("A World Fit for Children", Plan of Action, strategies and actions, Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, paras. 43 and 44)

article 19

Appropriate legislative, administrative, social and educational measures to protect the child from "all forms of physical or mental violence..."

In its examination of States Parties' reports, the Committee on the Rights of the Child comments on many different forms of violence. In relation in particular to legislation, the Committee has criticized provisions that excuse or authorize corporal punishment of children, however light (see below, pages 264 and 265). "Mental violence" includes humiliation, harassment, verbal abuse, the effects of isolation and other practices that cause or may result in psychological harm. Research provides growing evidence of the effects on children's mental health not only of direct violence but also of witnessing violence – both family violence within the home and violence in the community, including armed conflict.

Other articles in the Convention cover in more detail the child's right to protection from forms of violence and exploitation that may take place in various settings or to protection in the wider society:

- protection of children from harmful information (article 17, see page 224);
- protection of children from traditional practices prejudicial to health (article 24(3), see page 371);
- school discipline to be consistent with the child's human dignity and in conformity with the Convention (article 28(3), see page 428);
- sexual exploitation and sexual abuse including "organized" abuse and involvement of children in prostitution and pornography (article 34, see page 513 and Optional Protocol, page 669);
- protection of children from sale, trafficking and abduction (article 35, see page 531);
- other forms of exploitation (article 36, see page 543);
- protection from torture and other cruel, inhuman or degrading treatment or punishment (article 37, see page 547);
- effects of armed conflict on children (article 38, see page 573 and Optional Protocol, page 659).

The Committee expresses concern at the level of violence to children, inside and outside the home, and recommends a variety of measures to prevent it. For example:

"While the Committee takes note of the State Party's efforts to prevent and combat cases of abuse and ill-treatment of children, it is of the opinion that these measures need to be reinforced. Concern is also expressed at the insufficient awareness regarding the harmful consequences of neglect and abuse, including sexual abuse, both within and outside the family. Concern is also expressed at the insufficient resources, both financial and human, as well as at the lack of adequately trained personnel, to prevent and combat such abuse. The insufficiency of rehabilitation measures and facilities for victims, and their limited access to justice are also matters of concern. In the light of, inter alia, *articles 19 and 39 of the Convention, the Committee recommends that the State Party take effective measures, including reinforcing current multidisciplinary programmes and rehabilitation measures, to prevent and combat child abuse and ill-treatment of children within the family, at school and in society at large. It suggests,* inter alia, *that law enforcement should be strengthened with respect to such crimes; adequate procedures and mechanisms to deal with complaints of child abuse should be reinforced, in order to provide children with prompt access to justice and to avoid the impunity of offenders. Furthermore, educational programmes should be established to combat traditional attitudes within society regarding this issue. The Committee encourages the State Party to consider seeking international cooperation to this effect from,* inter alia, *UNICEF and international non-governmental organizations."* *(Costa Rica CRC/C/15/Add.117, para. 20)*

It provided more detailed recommendations when it examined Costa Rica's Third Report:

"With reference to its previous recommendation... the Committee notes the effort made by the State Party to address the problems of child abuse and neglect, inter alia *by promoting the reporting of alleged cases of child abuse, the waiver of civil/criminal responsibility in case of reporting in good faith, the establishment of a protocol for dealing with cases of child abuse and the functioning of the helpline 911. But the Committee is concerned that the provision of services to child victims is to a large degree left to non-governmental organizations and that a comprehensive prevention policy has not been developed.*

"The Committee recommends the State Party to strengthen its efforts to combat child abuse and neglect in particular by actively supporting helplines such as 911 and Línea cuenta conmigo, increase its support to

non-governmental organizations and implement programmes under PANI's responsibility to ensure that child victims do receive the necessary protection, counselling and other support. The Committee also recommends the review of existing legislation in order to ensure that legal procedures dealing with cases of child abuse are child sensitive, do respect the child's privacy and prevent revictimization of the child, inter alia, *by accepting videotaped testimony of the child victim as admissible evidence. The Committee further recommends the State Party to develop and implement a comprehensive policy for the prevention of child abuse and neglect…" (Costa Rica CRC/C/15/Add.266, paras. 37 and 38)*

"injury or abuse, neglect or negligent treatment"

Adult violence to children causes death and injury on a massive scale which has only begun to become visible in the last few decades. The United Nations Secretary-General's Study on Violence Against Children has increased this visibility of all forms of violence in all settings, while emphasizing that further research and systematic data collection is needed (A/61/299).

Neglect may be deliberate or it may be caused by the inability of the parent/family/community/State to provide appropriately for the child. Child neglect exists in various forms and to varying degrees in all societies. For example, some countries with highly developed economies and social systems in which employment of women has reached almost the same level as employment of men are now preoccupied with the neglect of very young children by their working parents and with the self-reported "loneliness" of many children. The State's overall obligation to ensure to the maximum extent possible the survival and development of the child (article 6), and its specific obligations to provide appropriate assistance to parents (article 18) together with rights to health care (article 24), to benefit from social security (article 26), to an adequate standard of living (article 27) and to education (article 28) are all particularly relevant to the prevention of neglect.

Reference to "negligent treatment" raises the issue of accidents to children (also raised in article 24(2)(e), see page 361). The developmental state and physical vulnerability of children makes them particularly prone to accidents. While the primary responsibility may be that of parents, state actions are also required to prevent many types of accident. Article 3(2) gives States an overarching obligation to provide care and protection necessary for the well-being of the child.

"maltreatment or exploitation, including sexual abuse"

The inclusion of these words and of additional articles expanding on sexual and other forms of exploitation (in particular article 32, economic exploitation, page 479; article 34, sexual exploitation, page 513; the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography, page 669; and article 36, other forms of exploitation, page 543) emphasizes the intention of the drafters of the Convention to make the protection comprehensive. Maltreatment or exploitation covers any other adverse treatment not necessarily involving physical or mental violence or defined as abuse. In most countries, sexual abuse is defined to include not only violent sexual assaults but also other sexual activity, consensual or not, with children regarded as immature or below a certain defined age of sexual consent (see article 1, page 7).

In many cases, the Committee has stressed the need for particular action to combat sexual abuse, including within the family:

"The Committee notes with concern information indicating a high level of tolerance of promiscuity in families, the lack of information available on child abuse in the family and that legislation for the protection of children from sexual abuse does not expressly prohibit sexual intercourse with minors that are the offender's natural children.

"The Committee recommends that the State Party:

(a) Undertake studies on domestic violence, ill-treatment and abuse (including sexual abuse within the family) in order to adopt effective laws, policies and programmes to combat all forms of abuse;

(b) Develop a national system for receiving, monitoring and investigating complaints and, when necessary, prosecuting cases in a manner that is child sensitive and respects the victims' privacy;

(c) Reform legislation on child abuse in the family to expressly prohibit sexual abuse;

(d) Set up a comprehensive and nationwide response system that is designed to provide, where appropriate, support and assistance to both victims and perpetrators of family violence, rather than only intervention or punishment, and that ensures that all victims of violence have access to counselling and assistance with recovery and reintegration, while preventing stigmatization of victims of abuse;

(e) Seek technical assistance from, among others, UNICEF, in this regard." (Equatorial Guinea CRC/C/15/Add.245, paras. 44 and 45)

The Committee also expresses concern about discrimination in protection on grounds of gender or age. For example:

"… the Committee is concerned at the age limit set in the legislation regarding violence against children, as children above 14 or 16 years (depending on the relations with the perpetrator) do not benefit from the same protection…
"In the light of article 19 of the Convention, the Committee recommends that the State Party: (c) Amend its legislation regarding the existing age limit set for a special protection against all forms of violence against children…;" (Italy CRC/C/15/Add.198, paras. 37 and 38)

"… The Committee also notes with concern that the Penal Code criminalizes only the rape of girls, leaving boys without legal protection." (Lebanon CRC/C/LBN/CO/3, para. 47)

"while in the care of parent(s), legal guardian(s) or any other person who has the care of the child"

The scope of article 19 includes what happens within the family home and within other "caring" situations – foster care and day care, schools, all institutional settings and so forth. The requirement in article 3(3) for consistent standards and supervision for all institutions, services and facilities is relevant to the prevention of violence to children (see below, page 264).

The Committee has also noted that violence within the family often drives children from their homes and onto the streets:

"The Committee is seriously alarmed by the existence of child abuse (including sexual abuse) and neglect within the family, which often lead to children being abandoned or running away, thus facing the additional risks of violations of their human rights." (Philippines CRC/C/15/Add.29, para. 13)

Children particularly vulnerable to violence

The report of the United Nations Secretary-General's Study on Violence Against Children suggests that young children are at greatest risk of physical violence, while sexual violence predominantly affects those who have reached puberty or adolescence. Boys are at greater risk of physical violence than girls, while girls face greater risk of sexual violence, neglect and forced prostitution. The report identifies some groups of children as especially vulnerable to violence: "These include children with disabilities, those from ethnic minorities and other marginalized groups, 'street children' and those in conflict with the law, and refugee and other displaced children." (A/61/299, paras. 30 and 31)

In five General Comments, the Committee on the Rights of the Child has identified vulnerabilities of very young children, children with disabilities, adolescents, children affected by HIV/AIDS, and unaccompanied and separated children:

Early childhood. *"Young children are frequent victims of neglect, maltreatment and abuse, including physical and mental violence. Abuse very often happens within families, which can be especially destructive. Young children are least able to avoid or resist, least able to comprehend what is happening and least able to seek the protection of others. There is compelling evidence that trauma as a result of neglect and abuse has negative impacts on development, including, for the very youngest children, measurable effects on processes of brain maturation. Bearing in mind the prevalence of abuse and neglect in early childhood and the evidence that it has long-term repercussions, States Parties should take all necessary measures to safeguard young children at risk and offer protection to victims of abuse, taking positive steps to support their recovery from trauma while avoiding stigmatization for the violations they have suffered…"* (Committee on the Rights of the Child, General Comment No. 7 on "Implementing child rights in early childhood", 2005, CRC/C/GC/7/Rev.1, para. 36(a))

Children with disabilities. *"Children with disabilities are more vulnerable to all forms of abuse be it mental, physical or sexual in all settings, including the family, schools, private and public institutions, including alternative care, work environment and community at large. It is often quoted that children with disabilities are five times more likely to be victims of abuse. In the home and in institutions, children with disabilities are often subjected to mental and physical violence and sexual abuse as well as being particularly vulnerable to neglect and negligent treatment since they often present an extra physical and financial burden on the family. In addition, the lack of access to a functional complaint-receiving monitoring system, is conducive to systematic and continuing abuse. School bullying is a particular form of violence that children are exposed to and more often than not, this form of abuse targets children with disabilities. The main reasons for their particular vulnerability include,* inter alia: *(a) Their inability to hear, move, and dress, toilet, and bath independently, increases their vulnerability to intrusive personal care or abuse.*
(b) Living in isolation from parents, siblings, extended family and friends, increases the likelihood of abuse.
(c) Should they have communication or intellectual impairments, they may be ignored, disbelieved or misunderstood should they complain about abuse.

(d) Parents or others taking care of the child may be under considerable pressure or stress because of physical, financial and emotional issues in caring for their child. Studies indicate that those under stress may be more likely to commit abuse.
(e) Children with disabilities are often wrongly perceived as being non-sexual and not having an understanding of their own bodies and therefore can be targets of abusive people, particularly those who base abuse on sexuality.
"In addressing the issue of violence and abuse, States Parties are urged to take all necessary measures for the prevention of abuse of and violence against children with disabilities, such as:
(a) Train and educate parents or others taking care of the child to understand the risks and signs of abuse of the child.
(b) Ensure that parents are vigilant about choosing caregivers and facilities for their children and improve their ability to detect abuse.
(c) Provide and encourage support groups for parents, siblings and others taking care of the child to assist them in caring for their children and coping with their disabilities.
(d) Ensure that children and caregivers know that the child is entitled as a matter of right to be treated with dignity and respect and they have the right to complain to appropriate authorities if those rights are breached.
(e) Schools must take all measures to combat school bullying and pay particular attention to children with disabilities providing them with the necessary protection while maintaining their inclusion into the mainstream education system.
(f) Ensure that institutions providing care for children with disabilities are staffed with specially trained personnel, subject to appropriate standards, regularly monitored and evaluated and have accessible and sensitive complaint mechanisms.
(g) Establish an accessible, child-sensitive complaint mechanism and a functioning monitoring system based on the Paris Principles.
(h) Take all necessary legislative measures that are required to punish and remove perpetrators from the home ensuring that the child is not deprived of his or her family and continues to live in a safe and healthy environment.
(i) Ensure the treatment and reintegration of victims of abuse and violence with a special focus on their overall recovery programmes…"
(Committee on the Rights of the Child, General Comment No. 9 on "The rights of children with disabilities", 2006, CRC/C/GC/9, paras. 43 and 44)

The Convention on the Rights of Persons with Disabilities, adopted in December 2006, requires special measures for protection from all forms of exploitation, violence and abuse, in article 16:

"1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

"2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, *inter alia*, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

"3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities...

"5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted."

In article 17, the Convention asserts the right of every person with disabilities "to respect for his or her physical and mental integrity on an equal basis with others".

Adolescence. In its General Comment on "Adolescent health and development in the context of the Convention on the Rights of the Child", the Committee on the Rights of the Child suggests that States should pay increased attention to the specific forms of abuse, neglect, violence and exploitation which affect the adolescent age group. In particular they should adopt special measures to ensure the physical, sexual and mental integrity of adolescents with disabilities, who are particularly vulnerable:

"In taking these measures, States Parties have to take into account the evolving capacities of adolescents and involve them in an appropriate manner in developing measures, including programmes, designed to protect them. In this context, the Committee emphasizes the positive impact that peer education can have, and the positive influence of proper role models, especially those in the worlds of arts, entertainment and sports."
(Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, para. 19)

The General Comment identifies other vulnerable groups of adolescents:

"Violence results from a complex interplay of individual, family, community and societal factors. Vulnerable adolescents such as those who are homeless or who are living in institutions, who belong to gangs or who have been recruited as child soldiers are especially exposed to both institutional and interpersonal violence. Under article 19 of the Convention, States Parties must take all appropriate measures to prevent and eliminate:
(a) institutional violence against adolescents, including through legislation and administrative measures in relation to public and private institutions for adolescents (schools, institutions for disabled adolescents, juvenile reformatories, etc.), and training and monitoring of personnel in charge of institutionalized children or who otherwise have contact with children through their work, including the police; and
(b) interpersonal violence among adolescents, including by supporting adequate parenting and opportunities for social and educational development in early childhood, fostering non-violent cultural norms and values (as foreseen in article 29 of the Convention), strictly controlling firearms and restricting access to alcohol and drugs." (Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, para. 23)

HIV/AIDS. *"Children may be exposed to various forms of violence and abuse which may increase the risk of their becoming HIV-infected, and may also be subjected to violence as a result of their being infected or affected by HIV/AIDS. Violence, including rape and other forms of sexual abuse, can occur in the family or foster setting or may be perpetrated by those with specific responsibilities towards children, including teachers and employees of institutions working with children, such as prisons and institutions concerned with mental health and other disabilities...*
"Programmes must be specifically adapted to the environment in which children live, to their ability to recognize and report abuses and to their individual capacity and autonomy. The Committee considers that the relationship between HIV/AIDS and the violence or abuse suffered by children in the context of war and armed conflict requires specific attention. Measures to prevent violence and abuse in these situations are critical, and States Parties must ensure the incorporation of HIV/AIDS and child rights issues in addressing and supporting children – girls and boys – who were used by military or other uniformed personnel to provide domestic help or sexual services, or who are internally displaced or living in refugee camps..." (Committee on the Rights of the Child, General Comment No. 3 on "HIV/AIDS and the rights of the child", 2003, CRC/GC/2003/3, paras. 37 and 38)

Unaccompanied or separated children. The Committee highlights the vulnerability of unaccompanied or separated children outside their country of origin, in particular to sexual exploitation and trafficking. (General Comment No. 6 on "Treatment of unaccompanied and separated children outside their country of origin", 2005, CRC/GC/2005/6, paras. 50 to 53. See also articles 34 and 35 and the Optional Protocol on the sale of children, child prostitution and child pornography.)

The child's right to protection from corporal punishment

The Committee on the Rights of the Child has paid particular attention to challenging the legality and social acceptance of corporal punishment of children since it began examining reports. The Committee frequently emphasizes to individual States that no form or level of corporal punishment should be permitted; that it should be prohibited "however light".

It adopted its General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment" in 2006 (For summary, see box, page 262).

The Committee welcomes global progress in its General Comment No. 8:

"Since it began examining States Parties' reports the Committee has recommended prohibition of all corporal punishment, in the family and other settings, to more than 130 States in all continents. The Committee is encouraged that a growing number of States are taking appropriate legislative and other measures to assert children's right to respect for their human dignity and physical integrity and to equal protection under the law. The Committee understands that, by 2006, more than 100 States had prohibited corporal punishment in their schools and penal systems for children. A growing number have completed prohibition in the home and family and all forms of alternative care." (Committee on the Rights of the Child, General Comment No. 8, 2006, CRC/C/GC/8, para. 5)

In its first General Comment on "The aims of education", the Committee recalls that:

"Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with

article 12(1) and to participate in school life. Education must also be provided in a way that respects the strict limits on discipline reflected in article 28(2) and promotes non-violence in school. The Committee has repeatedly made clear in its concluding observations that the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline." (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 8)

The Summary Record of the Committee's discussion with Government representatives about the United Kingdom's Initial Report states that a member of the Committee said: "It was the Committee's experience that difficulties arose whenever a 'reasonable' level of corporal punishment was permitted under a State's internal law. To draw an analogy, no one would argue that a 'reasonable' level of wife-beating should be permitted. His conclusion was that the United Kingdom position represented a vestige of the outdated view that children were in a sense their parents' chattels. In the Scandinavian countries and Austria, stricter legislation had resulted in fewer cases going to court than in the United Kingdom, rather than the reverse. Furthermore, he noted from recent press reports that some judges tended to interpret the legislation fairly liberally: one, for example, had ruled that 15 lashes administered with a leather belt did not constitute excessive punishment. The notion of a permissible level of corporal punishment was thus best avoided." (United Kingdom CRC/C/SR.205, para. 63)

The United Kingdom's Initial Report had defended the concept of "reasonable chastisement": "In the United Kingdom Government's view article 19 has to be read in conjunction with article 5 which obliges States to respect a parent's responsibilities to provide appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention. The Government's view is that appropriate direction and guidance include the administration, by the parent, of reasonable and moderate physical chastisement to a child... Excessive punishment amounting to abuse is, of course, a criminal offence, and so it must remain." (United Kingdom CRC/C/11/Add.1, paras. 335 and 336)

But in discussion with United Kingdom Government representatives, a Committee member stated: "... with regard to corporal punishment within the family the United Kingdom delegation had stated that it was not appropriate to regulate what should be a private matter by means of legislation. It must be borne in mind, however, that article 19 of the Convention required all appropriate measures, including legislative measures, to be taken to protect the child against, *inter alia*, physical violence. A way should thus be found of striking the balance between the responsibilities of the parents and the rights and evolving capacities of the child that was implied in article 5 of the Convention. There was no place for corporal punishment within the margin of discretion accorded in article 5 to parents in the exercise of their responsibilities. Other countries had found it helpful to incorporate a provision to that effect in their civil law..." (United Kingdom CRC/C/SR.205, para. 72)

When it examined the United Kingdom's Second Report, the Committee stated that it

"... deeply regrets that the State Party persists in retaining the defence of 'reasonable chastisement' and has taken no significant action towards prohibiting all corporal punishment of children in the family.
"The Committee is of the opinion that the Government's proposals to limit rather than to remove the 'reasonable chastisement' defence do not comply with the principles and provisions of the Convention and the aforementioned recommendations, particularly since they constitute a serious violation of the dignity of the child (see similar observations of the Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.79, para. 36). Moreover, they suggest that some forms of corporal punishment are acceptable, thereby undermining educational measures to promote positive and non-violent discipline."

The Committee went on to recommend that the United Kingdom:

"(a) With urgency adopt legislation throughout the State Party to remove the 'reasonable chastisement' defence and prohibit all corporal punishment in the family and in any other contexts not covered by existing legislation;
(b) Promote positive, participatory and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, involving children and parents and all those who work with and for them, and carry out public education programmes on the negative consequences of corporal punishment." (United Kingdom CRC/C/15/Add.188, paras. 36 to 38)

The Committee frequently emphasizes that no level of corporal punishment should be permitted:

"The Committee expresses its concern about the lack of prohibition in local legislation of the use of corporal punishment, however light, in schools, at home and in institutions; in the view of the Committee this contravenes the principles and provisions of the Convention, in particular articles 3, 5, 6, 19, 28(2), 37(a), (c) and 39..." (Australia CRC/C/15/Add.79, para. 15)

The right to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28(2) and 37, *inter alia*)

Committee on the Rights of the Child, General Comment No. 8, 2006: summary

The purpose of General Comment No. 8, the first of a series of Comments on violence against children, is "to highlight the obligation of all States Parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children and to outline the legislative and other awareness-raising and educational measures that States must take. Addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings, is not only an obligation of States Parties under the Convention. It is also a key strategy for reducing and preventing all forms of violence in societies."

Definition

The Committee defines corporal, or physical, punishment as:

"... any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting ('smacking', 'slapping', 'spanking') children, with the hand or with an implement – whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment which are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child."

Corporal punishment and other cruel or degrading forms of punishment of children take place in many settings, including within the home and family, in all forms of alternative care, schools and other educational institutions and justice systems – both as a sentence of the courts and as a punishment within penal and other institutions, in situations of child labour, and in the community.

The Committee distinguishes between violence and humiliation as forms of punishment, which it rejects, and discipline in the form of "necessary guidance and direction", which is essential for healthy growth of children. The Committee also differentiates between punitive physical actions against children and physical interventions aimed at protecting children from harm.

Human rights standards

The foundations of the human rights obligation to prohibit and eliminate all corporal punishment and all other degrading forms of punishment lie in the rights of every person to respect for his/her dignity and physical integrity and to equal protection under the law. The Committee traces this back to the International Bill of Human Rights – "The dignity of each and every individual is the fundamental guiding principle of international human rights law" – and shows how the Convention on the Rights of the Child builds on these principles. Article 19 of the Convention, which requires States to protect children "from all forms of physical or mental violence", leaves no room for ambiguity: "'all forms of physical or mental violence' does not permit any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and the State must take all appropriate legislative, administrative, social and educational measures to eliminate them."

The Committee notes that corporal punishment has been condemned by other international and regional human rights treaty bodies and by constitutional and high-level courts in many countries.

The fact that article 19 and article 28(3) – on school discipline – do not specifically refer to corporal punishment does not in any way undermine the obligation to prohibit and eliminate it: "... the Convention, like all human rights instruments, must be regarded as a living instrument, whose

interpretation develops over time. In the 16 years since the Convention was adopted, the prevalence of corporal punishment of children in their homes, schools and other institutions has become more visible, through the reporting process under the Convention and through research and advocacy by, among others, national human rights institutions and NGOs.

"Once visible, it is clear that the practice directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity. 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."

In response to the view that a certain degree of "reasonable" or "moderate" corporal punishment is in the "best interests" of the child, the Committee states that "interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence and the requirement to give due weight to the child's views; it cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity".

The Committee recognizes that some justify the use of corporal punishment through religious teachings but again notes that "practice of a religion or belief must be consistent with respect for others' human dignity and physical integrity" and that "freedom to practice one's religion or belief may be legitimately limited in order to protect the fundamental rights and freedoms of others".

Measures and mechanisms required to eliminate corporal punishment and other cruel or degrading forms of punishment

Legal reform is essential in eliminating corporal punishment. All provisions which allow any degree of corporal punishment – "reasonable" punishment, "lawful" correction and so on – whether in statute or in case/common law – should be repealed. But the law must also explicitly prohibit corporal punishment in all settings: "Once the criminal law applies fully to assaults on children, the child is protected from corporal punishment wherever they are and whoever is the perpetrator. But in the view of the Committee, given the traditional acceptance of corporal punishment, it is essential that the applicable sectoral legislation – e.g. family law, education law, law relating to all forms of alternative care and justice systems, employment law – clearly prohibits its use in the relevant settings. In addition, it is valuable if professional codes of ethics and guidance for teachers, carers and others and also the rules or charters of institutions emphasize the illegality of corporal punishment and other cruel or degrading forms of punishment."

The Committee emphasizes that law reform should be accompanied by awareness-raising, guidance and training, because the primary purpose of such reform is prevention. Prohibition in law does not mean that all cases of corporal punishment of children by parents should lead to prosecution.

Effective prohibition also requires the consistent promotion of positive, non-violent relationships and education to all those involved with children. While the Convention does not prescribe in detail how parenting should be carried out, it does "provide a framework of principles to guide relationships both within the family and between teachers, carers and others and children" (para. 46). For example, children's developmental needs must be respected, their best interests are fundamental, and their views should be given due weight.

Finally, States Parties should monitor their progress towards eliminating corporal punishment and other cruel or degrading forms of punishment, including through the use of interview research involving children and the establishing of independent monitoring bodies, and should report on all measures taken in their Periodic Reports to the Committee.

(Committee on the Rights of the Child, General Comment No. 8, "The right to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28(2) and 37, inter alia*)", 2006, CRC/C/GC/8. For full text see www.ohchr.org/english/bodies/crc/comments.htm.)*

"The Committee expresses its concern about the lack of prohibition in local legislation of the use of corporal punishment, however light, at home. In the view of the Committee, this contravenes the principles and provisions of the Convention." (Libyan Arab Jamahiriya CRC/C/15 Add.84, para. 14)

Violence in schools and care and justice systems

Reports to the Committee from various countries have raised the problem of violence to children in institutions, which can take two particular forms:

- "legalized" use (or continued use despite prohibition) of violent and/or humiliating discipline or treatment such as corporal punishment, unreasonable physical restraint, solitary confinement and other forms of isolation, obligations to wear distinctive clothing, reduction of diet, restriction or denial of contact with family members and/or friends, verbal abuse or sarcasm and so on;
- violence, or threats of violence, by children against children, termed "bullying" or "mobbing" in some societies, which can range from teasing and harassment (commonly including racial and sexual harassment) to serious physical assault.

The Committee adopted detailed recommendations about violence to children in institutions following its 2000 Day of General Discussion on "State violence against children" (see box, page 270).

Article 3(3) requires that "institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision". In relation to protection from violence, there should be clear standards established in legislation:

- prohibiting corporal punishment and any other inhuman or degrading treatment or punishment (in addition, rules should specify the prohibition of any other forms of cruel, inhuman or degrading discipline or treatment known to be commonly used);
- requiring clear policies for the prevention of any forms of violence by children against children in institutions;
- ensuring there are clear and well-publicized procedures to enable children to seek confidential advice and to make representations and complaints about their treatment to an independent body with appropriate powers of investigation and recommendation/action. Such procedures should ensure that where necessary children have access to independent advocates or representatives who can advise them and/or act on their behalf; special arrangements may be required to safeguard children with disabilities and very young children.

In relation to schools, article 28(2) requires 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 and in conformity with the present Convention." As the Committee has stressed, in General Comment No. 1 on "The aims of education" (see article 29, page 439) and in General Comment No. 8, this includes conformity with article 19, and the protection of children from "all forms of physical or mental violence". Physical punishment and other humiliating punishments amounting to mental violence are thus outlawed.

The Committee has highlighted bullying in schools in comments to some States (and in recommendations adopted following its Day of General Discussion on "Violence against children, within the family and in schools"). For example:

"The Committee welcomes the efforts taken to eradicate bullying, such as the incorporation into the Education Act ... and into the national curriculum of rules on action to counter bullying, as well as the 2001-2002 campaign against bullying, entitled 'Together' (Tillsammans). However, the Committee notes that the rules still have to be fully implemented and that bullying against children with disabilities and of foreign origin continues to be a concern.

"The Committee recommends that the State Party, in its efforts to prevent and combat bullying, pay special attention to children with disabilities and of foreign origins, and that the rules for countering bullying are fully implemented in all schools and other institutions with the involvement of children." (Sweden CRC/C/15/Add.248, paras. 35 and 36)

The Committee's examination of reports has found that in some States corporal punishment persists as a sentence of the courts for children under 18 years, as well as being administered as a punishment within penal institutions. This conflicts not only with article 19 and other articles of the Convention but also with the United Nations rules and guidelines relating to juvenile justice, which the Committee has consistently promoted as providing relevant standards (see box). Violence by State officials including police has

Corporal punishment and juvenile justice standards

United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the "Beijing Rules": rule 17.3 (Guiding Principles in Adjudication and Disposition) states: "Juveniles shall not be subject to corporal punishment."

United Nations Rules for the Protection of Juveniles Deprived of their Liberty: rule 67 states: "...all disciplinary measures constituting cruel, inhumane or degrading treatment shall be strictly prohibited, including corporal punishment..."

United Nations Guidelines for the Prevention of Juvenile Delinquency, the Riyadh Guidelines: paragraph 21(h) states that education systems should devote particular attention to "avoidance of harsh disciplinary measures, particularly corporal punishment" and paragraph 54 says "No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions."

concerned the Committee in a number of countries, including violence against children living and/or working on the streets.

Traditional practices involving violence and/or prejudicial to health

The specific reference to protecting children from traditional practices comes in article 24(3), which obliges States to "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children" (see page 371 for further discussion). Traditional practices also need to be reviewed to determine whether they involve any form of physical or mental violence from which children must be protected under article 19.

Suicide and self-harm

Protecting children from self-harm, including suicide and attempted suicide, clearly comes within the ambit of article 19, and also of article 6. Increases in the suicide rate among certain age groups of children in some industrialized countries have caused concern to the Committee, which has proposed research and further action (for discussion, see article 6, page 92).

Violent images

Concern at the levels of interpersonal violence in Western societies has led to a particular focus on the effects that violent images in the media may have on children, including in particular those on television and videos or computer-generated. The concern is both that frequent exposure to such images may desensitize children to violence, and that they may be encouraged to imitate particular violent behaviour. Article 17(e) requires States Parties to "encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18" (see article 17, page 224).

Protective and preventive measures: article 19(2)

The second paragraph of article 19 provides a non-exhaustive list of measures that States should take to protect children and to prevent violence (see page 249).

"... procedures for the establishment of social programmes to provide ... support for the child and for those who have the care of the child, as well as for other forms of prevention..."

These words emphasize the relevance of social conditions to the protection of children from violence and, in particular, to the protection from neglect and negligent treatment, and they link article 19 with other relevant provisions in the Convention on the Rights of the Child, including the overall duty in article 4 (to implement measures "to the maximum extent of available resources"), article 18 (the obligation of States Parties to render appropriate assistance to parents in the performance of their child-rearing responsibilities, and to ensure the development of institutions, facilities and services for the care of children), article 26 (the right of children to benefit from social security) and article 27 (the right of the child to an adequate standard of living).

Specific social programmes promoted by the Committee in its comments on States' reports include education/information campaigns on positive non-violent relationships with children and on the prevention of sexual abuse and exploitation. In addition to its general call for all those working with or for children to receive training in the principles and provisions of the Convention (see article 42, page 629), the Committee has

proposed special training in relation to child protection, telling Saint Vincent and the Grenadines to

"... train teachers, law enforcement officials, care workers, judges and health professionals in the identification, reporting and management of cases of ill-treatment..." *(Saint Vincent and the Grenadines CRC/C/15/Add.184, para. 39)*

And recommending, for example, that Mauritius should

"... train parents, teachers, law enforcement officials, care workers, judges, health professionals and children themselves in the identification, reporting and management of cases of violence and abuse, using a multidisciplinary and multisectoral approach." *(Mauritius CRC/C/MUS/CO/2, para. 48(c))*

In relation to eliminating the use of corporal punishment and other cruel or degrading forms of punishment and treatment, General Comment No. 8 emphasizes:

"Comprehensive awareness-raising of children's right to protection and of the laws that reflect this right is required. Under article 42 of the Convention, States undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike... "The Committee notes that there are now many examples of materials and programmes promoting positive, non-violent forms of parenting and education, addressed to parents, other carers and teachers and developed by Governments, United Nations agencies, NGOs and others. These can be appropriately adapted for use in different States and situations. The media can play a very valuable role in awareness-raising and public education. Challenging traditional dependence on corporal punishment and other cruel or degrading forms of discipline requires sustained action. The promotion of non-violent forms of parenting and education should be built into all the points of contact between the State and parents and children, in health, welfare and educational services, including early childhood institutions, day-care centres and schools. It should also be integrated into the initial and in-service training of teachers and all those working with children in care and justice systems." *(Committee on the Rights of the Child, General Comment No. 8, 2006, CRC/C/GC/8, paras. 45 and 48)*

"identification"

A long history exists of denial by adult societies of the extent of violence to children. The first step towards effective prevention of violence must be to ensure that all those in contact with children are alerted to the various forms of violence to children and the likely indications of it and that they are informed about appropriate action in conformity with the principles of the Convention. Public information campaigns to increase overall awareness of violence to children are essential and have been proposed by the Committee to many States Parties. It is only through interview studies with children and parents, in conditions of confidentiality and trust and with appropriate ethical safeguards that States can begin to build up a true picture of the prevalence of all forms of violence against children, including in the family, and be able to measure progress towards its elimination. It is not possible to judge the effectiveness of child protection systems without this sort of research.

"reporting"

The Committee expresses frequent concern at the fact that violence against children is often not reported. The introduction to the report of the independent expert for the United Nations study on violence against children states: "… much violence against children remains hidden for many reasons. One is fear: many children are afraid to report incidents of violence against them. In many cases parents, who should protect their children, remain silent if the violence is perpetrated by a spouse or other family member, a more powerful member of society such as an employer, a police officer, or a community leader. Fear is closely related to the stigma frequently attached to reporting violence, particularly in places where family 'honour' is placed above the safety and well-being of children. In particular, rape or other forms of sexual violence can lead to ostracism, further violence, or death." (A/61/299, para. 25)

The Committee told Lebanon:

"Abuse, neglect and maltreatment of children remain serious problems in the State Party. Due to the strong social and cultural taboos victims and witnesses rarely report these cases, despite the campaign 'Let's stop sticking our heads in the sand', which encourages individuals to bring to light violations of children's rights." *(Lebanon CRC/C/LBN/CO/3, para. 47)*

The Committee was pleased, for example, with Costa Rica's efforts to promote reporting of alleged cases of child abuse and also to waive civil/criminal responsibility for those who report in good faith (Costa Rica CRC/C/15/Add.266, paras. 37 and 38).

It urged Turkmenistan

"... to encourage reporting of instances of child abuse in all institutions – including out-

of-home placement, orphanages, psychiatric hospitals, schools and juvenile prisons…" *(Turkmenistan CRC/C/TKM/CO/1, para. 45)*

In many countries there are legal obligations to report known or suspected instances of child abuse to appropriate social authorities and/or the police. In some societies, these duties apply to certain professions (for example, social workers, teachers, doctors and other health workers); in others, they apply to members of the public as well.

The Committee has recommended mandatory reporting by professionals, for example telling Ghana that it was concerned

"… about the fact that there are no mandatory reporting requirements for professionals with regard to child abuse"

and recommending that it should introduce them *(Ghana CRC/C/GHA/CO/2, paras. 44 and 45).*

It recommended to Belize:

"… that the State Party implement its proposal to introduce legislation making the reporting of child abuse mandatory…" *(Belize CRC/C/15/Add.99, para. 22)*

Mandatory reporting raises potential conflicts with the child's right to confidential advice and counselling from doctors and others (see article 1, page 7, and article 12, page 168). Do children have a right to a completely confidential relationship with, for example, their doctor, lawyer, priest or religious elder? Article 12 suggests that children should have a right to express their views and have them taken seriously in any action proposed or taken in relation to violence towards them, and a formal right to be heard in any administrative procedures. Article 16 asserts the child's right to privacy, which is relevant to the child's right to confidential advice and counselling (see page 204).

The report of the independent expert for the United Nations study on violence against children recommends "that States should establish safe, well-publicized, confidential and accessible mechanisms for children, their representatives and others to report violence against children" (A/61/299, Overarching recommendations, para. 104, p. 27).

The *World Report on Violence against Children* expands on this: "Retrospective studies, questioning young adults about their childhood experiences, reveal that the majority of child victims did not talk to anyone or approach child protection services during their childhood, even in States which have highly developed systems. Reasons included not knowing where to go for help, a lack of services, lack of trust in the services or in some cases fear of reprisals from the perpetrator.

"In many countries, certain professional groups are under a legal obligation to report any concerns about violence against children under mandatory reporting systems… The Study has heard varying views about mandatory reporting. It is essential that every Government should review existing reporting systems and involve children or young adults with recent experience of child protection services in the review.

"In every locality and every setting which includes children, there should be well-publicized and easily accessible services required to investigate reports or indications of violence against children. There should also be access to services where children can go to talk in confidence about anything that is worrying or hurting them. Providing confidential services for children – services which guarantee that they will not report to others or take action without the child's consent, unless the child is at immediate risk of death or serious harm – remains controversial in many countries. Making confidential services available to children, including those most vulnerable to violence, challenges outdated concepts of parental 'ownership' of their children. Yet what we now know about intra-familial violence demands that children should have the same rights as adult family members to seek confidential advice and help." (Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006, Chapter 1, para. 8, p. 21)

The Committee, as well as the report of the United Nations Secretary-General's Study on Violence Against Children, commends the existence of children's telephone helplines which usually offer confidential advice and counselling on violence and other issues.

For example, the Committee told Colombia, Ghana and Latvia to:

"… support national coverage of the toll free child helpline service, Teléfono Amigo, *in order to be able to reach out to children in remote areas throughout the country."* *(Colombia CRC/C/COL/CO/3, para. 59)*

"Establish a toll-free nationwide telephone helpline for children resourced with well-trained professionals and volunteers…" *(Ghana CRC/C/GHA/CO/2, para. 45)*

"… ensure accessibility of the toll-free national helpline, including by increasing its hours of operation to 24 hours daily, creating an easy-to-remember 3-digit toll-free number that is

equally accessible from mobile phones and from rural and remote areas, and to cooperate with NGO hotlines and services for children in emergency situations." (Latvia CRC/C/LVA/CO/2, para. 37)

But the Committee is concerned that children should have universal access to help. For example, it told Mozambique:

"... although a telephone hotline exists for children to make complaints of abuse, very few children have access to a telephone or the means to pay for a call."

The Committee went on to recommend that the State should

"... develop child-sensitive mechanisms through which children can report incidents of sexual abuse, including the large majority of children who do not have access to telephones." (Mozambique CRC/C/15/Add.172, paras. 38 and 39)

"referral"

The implication of referral is that the investigation and treatment of violence to children is an issue requiring specialized, trained responses. In systems that require the reporting of violence, referral to particular agencies is normally specified, and in many countries there are now detailed administrative procedures for inter-agency collaboration (between social services, education, health, police and prosecution authorities, and including voluntary and private agencies). Such procedures for referral should be in conformity with the Convention, and in particular with article 12 – hearing and giving due weight to children's views.

"investigation"

The State should clearly have formal duties, exercised through one or more agencies, to investigate reported instances or allegations of violence to children, in conformity with the Convention's principles. The Committee calls for "*child-sensitive*" investigation, avoiding, for example, "*repeatedly interviewing child victims of abuse*" (Czech Republic CRC/C/15/Add.210, para. 41).

Under article 6, the Committee has drawn attention to the importance of full investigation of all child deaths. In countries where a rigorous procedure for such investigations has been implemented, it is less likely that preventable violence to children will go undetected (for discussion, see article 6, page 92).

"treatment and follow-up"

Again, these are specialized functions requiring appropriate training and interdisciplinary cooperation. In addition to the child's rights to health care and relevant services, two other articles of the Convention are relevant:

- the right to periodic review of care and treatment guaranteed by article 25: "States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement" (see page 379);
- the obligation to provide rehabilitation for victims, under article 39: "States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child" (see page 589).

"and, as appropriate, judicial involvement"

The appropriateness, or otherwise, of judicial involvement over instances of violence to children depends on the type and severity of the violence and on consideration of the Convention's articles identified by the Committee as general principles, in particular giving due weight to the expressed views of affected children (article 12) and ensuring that the best interests of the child are given primary consideration (article 3(1)).

There are two distinct forms of judicial involvement: to prosecute the perpetrator under the criminal law and to protect the child through various forms of supervision, removal of the perpetrator or placement of the child away from home. In regard to the latter, article 9(1) requires that a child "shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child" (see also page 121). Article 9 indicates in paragraph 1 that one of the circumstances in which such separation may be necessary is a case involving abuse or neglect of a child by his or her parents. When one parent is the alleged abuser, article 9 requires efforts to prevent separation of the child from the other parent if he or she is not implicated in the abuse.

The Committee has emphasized that the child may suffer from judicial involvement. It expressed concern to Saint Vincent and the Grenadines that

"Only the police and not social workers have the authority to remove a child from a family situation in which the child is suffering abuse or neglect, and this may add to the trauma suffered by the child."

It recommended:

"... giving the necessary legal authority to the social services to take urgent action to protect children from abuse." *(Saint Vincent and the Grenadines CRC/C/15/Add.184, paras. 38 and 39)*

While discussing Ukraine's Initial Report, a Committee member noted that the Report referred to deprivation of parental rights of persons who mistreated their children or inflicted corporal punishment on them: "In fact, there was no need to adopt such drastic solutions for every case. In his opinion, what the Committee had in mind was a clear signal from the relevant legislation that ill-treatment of children should never take place. If it did occur, the solution in all cases might not be for the child to be taken away from the parents. That might also be contrary to the best interests of the child. Efforts should rather be made to solve the problem within the family, if possible." (Ukraine CRC/C/8/Add.10, para. 65 and Ukraine CRC/C/SR.240, para. 65)

The Committee suggested to Poland, for example, that it should

"... set up a comprehensive and nationwide response system designed to provide, where appropriate, support and assistance to both victims and perpetrators of family violence, rather than only intervention or punishment..." *(Poland CRC/C/15/Add.194, para. 35(b))*

The Committee and the Rights of the Child has, in some cases, expressed concern that lack of prosecution may lead to a perception of impunity:

"The Committee is also preoccupied by the level of violence and the high incidence of ill-treatment and abuse of children, including cases attributed to the police or military personnel. It notes with concern that the efforts of the Government to combat child abuse and neglect are insufficient, both from the prevention and the sanction point of view... The failure to take effective steps to prosecute and punish those responsible for such violations or to make public decisions taken in this regard, including towards paedophiles, may lead to a feeling in the population that impunity prevails and that it is therefore useless to bring complaints before the competent authorities." *(Philippines CRC/C/15/Add.29, para. 14)*

The Committee has emphasized, in particular, that child victims of violence and exploitation should not be criminalized or stigmatized, quoting the importance of article 39 (rehabilitation of child victims, see page 589; see also article 34, page 513).

Recent developments have taken place in a number of countries to safeguard the welfare of child witnesses in cases involving prosecution of adult perpetrators of violence. These include less formal courts and opportunities for children's evidence to be pre-recorded or for children to give evidence or be cross-examined behind screens or through video links. Such provisions are justified in terms of the welfare and best interests of the child but must also comply with the rights of the adult defendants as set out in international law.

The Committee often calls for "a child-sensitive judicial procedure", proposing to Costa Rica for example that it should ensure that

"... legal procedures dealing with cases of child abuse are child sensitive, do respect the child's privacy and prevent re-victimization of the child, inter alia, *by accepting videotaped testimony of the child victim as admissible evidence..."* *(Costa Rica CRC/C/15/Add.266, para. 38)*

As noted under article 12 (page 156), in 2005 the Economic and Social Council of the United Nations adopted Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime. These define as "child sensitive" an approach that "balances the child's right to protection and that takes into account the child's individual needs and views" (para. 9(d)). The Guidelines provides both principles and a framework "that could assist Member States in enhancing the protection of child victims and witnesses in the criminal justice system" (Economic and Social Council, resolution 2005/20, annex). The Committee draws States' attention to the Guidelines. It recommended that Thailand should *"improve child-sensitive court procedures"* in accordance with the Guidelines (Thailand CRC/C/THA/CO/2, para. 30).

The Committee has noted that violations of children's rights under article 19 and other provisions of the Convention should not be investigated by military courts:

"... Violations of human rights and children's rights should always be examined by civilian courts under civilian law, not military courts. The outcome of investigations and cases

of convictions should be widely publicized in order to deter future offences and thus combat the perception of impunity." (Colombia CRC/C/15/ Add.30, para. 17)

It returned to this when it examined Colombia's Third Report, noting with concern

"... the unbroken pattern of impunity and the tendency to refer serious violations of human rights to the military justice system".

The Committee requested Colombia to

"... respect its international legal obligations in relation to fair trials and ensure that all investigations are carried out independently and impartially." (Colombia CRC/C/COL/CO/3, paras. 44 and 45)

article 19

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Committee on the Rights of the Child:

Recommendations adopted following Days of General Discussion on violence against children

State violence against children

Following its first Day of General Discussion in September 2000, on "State violence against children", the Committee on the Rights of the Child adopted detailed recommendations. The following are brief extracts from key sections:

(a) "REVIEW OF LEGISLATION

6. The Committee urges States Parties to repeal, as a matter of urgency, any legislation that allows the imposition of unacceptable sentences (death or life imprisonment) for offences committed before the age of 18, contrary to the provisions of article 37(a) of the Convention.

7. The Committee recommends that States Parties review all provisions of criminal legislation, including on criminal procedure, dealing with children under 18 (including any special legislation applying to armed forces) so as to ensure that it reflects appropriately the provisions of the Convention on the Right of the Child (arts. 37 and 40). It also recommends that States Parties consider incorporating into all relevant domestic laws and regulations (including, where appropriate, those dealing with children in care) the provisions of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules', adopted by General Assembly resolution 40/33 of 29 November 1985), of the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines, adopted by General Assembly resolution 45/112 of 14 December 1990), of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (adopted by General Assembly resolution 45/113 of 14 December 1990), and of the Guidelines for Action on Children in the Criminal Justice System (the Vienna Guidelines, annexed to Economic and Social Council resolution 1997/30 of 21 July 1997). In particular, the Committee recommends that penal legislation applicable to juveniles be reviewed so as to ensure that courts are not restricted to custodial sentences disproportionate to the offence.

8. The Committee recommends that States Parties review all relevant legislation to ensure that all forms of violence against children, however light, are prohibited, including the use of torture, or cruel, inhuman or degrading treatment (such as flogging, corporal punishment or other violent measures), for punishment or disciplining within the child justice system, or in any other context. The Committee recommends that such legislation incorporate appropriate sanctions for violations and the provision of rehabilitation for victims.

9. The Committee recommends that States Parties review all relevant legislation to ensure that children under 18, who are in need of protection are not considered as offenders (including leg-

islation dealing with abandonment, vagrancy, prostitution, migrant status, 'truancy', runaways, etc.) but are dealt with under child protection mechanisms.

10. The Committee recommends that States Parties review emergency and/or national security legislation to ensure that it provides appropriate safeguards to protect the rights of children and prevent violence against them, and that it is not used inappropriately to target children (for example, as threats to public order or in response to children living or working on the streets).

11. The Committee recommends, in particular, that States Parties give urgent consideration to the need to provide appropriate safeguards to guarantee the security, protection and rehabilitation of children held in custody, including through measures such as the imposition of strict limits on pre-trial detention, that would reduce the number of children held in detention.

12. The Committee recommends that States Parties review legislation dealing with children deprived of a family environment to ensure that placement decisions are subject to periodic judicial review, including at the request of children themselves. Such legislation should also be reviewed so as to ensure that relevant rules and regulations set out detailed standards of care for all institutions (public and private) caring for children, including the prohibition of the use of violence.

13. The Committee recommends that the effective implementation of all such legislation be carefully monitored, including for the provision of necessary resources.

AWARENESS-RAISING, SENSITIZATION AND TRAINING

14. The Committee encourages States Parties, NGOs, United Nations human rights mechanisms, United Nations agencies and other bodies to give priority to raising awareness about the problem of violence against children:

(a) The Committee urges the launching of public information campaigns to raise awareness and sensitize the public about the severity of human rights violations in this domain and their harmful impact on children, and to address cultural acceptance of violence against children, promoting instead 'zero tolerance' of violence;

(b) The media should be encouraged to play an active role in educating the public and raising awareness. Negative reporting (blaming categories of children for individual incidents) should be avoided and positive reporting (calling attention to the violations) encouraged;

(c) In raising awareness, children's views and experiences of violence should be publicized and heard;

(d) Accurate, up-to-date and disaggregated data should be collected on the numbers and condition of children living in institutions or in the care of the State, held in pre-trial detention or in police stations, serving custodial sentences or subject to diversionary or alternative measures, etc.;

(e) States Parties should translate appropriate information on violence against children into its national and local languages, and ensure that it is disseminated to all relevant professional groups, to children and to the general public.

15. The Committee recommends that minimum standards be set for the professional qualification and training of individuals working in institutions caring for children, in alternative systems, in the police, and in juvenile penal institutions, including the condition that they not have a prior record of violence. The professional status, rewards and career incentives for such workers should ensure that appropriate qualifications can be requested for these professional groups.

16. The Committee recommends that States Parties, in partnership with relevant NGOs and seeking international technical assistance where appropriate, ensure training in child rights for all relevant professional groups including, but not limited to, care and social workers, health professionals, lawyers, the judiciary, members of police and other security forces, staff of penal institutions, etc. Such training should follow interdisciplinary methods promoting collaborative approaches, include relevant human rights standards and non-violent methods of discipline,

promote alternatives to institutionalization, and provide information on child development, and on the background, rights and needs of specially vulnerable groups of children (those from minority groups, children with disabilities, etc.)."

Other sections cover international actions, including the proposals for a United Nations study on violence against children and a workshop on strengthening relevant United Nations human rights mechanisms; prevention, including alternatives to institutionalization; monitoring and complaint mechanisms; resources; and the role of non-governmental organizations. (Report on the twenty-fifth session, September/October 2000, CRC/C/100, paras. 688 et seq.*)*

Violence against children, within the family and in schools

Following its second Day of General Discussion in September 2001, on "Violence against children, within the family and in schools", the Committee on the Rights of the Child adopted detailed recommendations. The following are brief extracts from key sections:

"GUIDING PRINCIPLES

701. The Committee urges that references to 'family' and 'school' not be understood as narrowly defined. The references to 'family' (or to 'parents') must be understood within the local context and may mean not only the 'nuclear' family, but also the extended family or even broader communal definitions including grandparents, siblings, other relatives, guardians or care providers, neighbours, etc. Similarly, all references to 'school' (or to 'teachers') should be understood to include schools, teaching institutions, and other formal and non-formal learning environments.

702. The Committee recommends that an alternative vision of the school and the family that respects the rights and dignity of all, including children, parents and teachers should guide all actions on the issue of violence against children. The main strategy should be to galvanize actions around this vision rather than using punitive measures. In this vision relations between and among children and parents or teachers (as well as other family members or students) are mutually respectful and the safety and security of all is promoted.

703. The Committee considers that violence against children is unacceptable under any circumstances, in accordance with the provisions of the Convention on the Rights of the Child…

704. In conceptualizing violence, the Committee recommends that the critical starting point and frame of reference be the experience of children themselves. Therefore, children and young people must be meaningfully involved in promoting and strategizing action on violence against children.

705. The Committee recommends that efforts be made to strengthen the link between communities and families and between communities and schools. Community members, including parents, children and teachers, need to be well informed about their rights and fully involved in the life of the school, including in school governance.

706. The Committee recognizes that different forms of violence against children (such as corporal punishment, bullying, sexual harassment and abuse, and verbal and emotional abuse) are interlinked, and that violence in the family and school reinforce one another. Action against violence therefore must take a holistic approach and emphasize non-tolerance of all forms of violence. Physical violence and other more severe forms of violence are more likely where everyday harassment is tolerated. Tolerance of violence in one sphere makes it difficult to resist it in another...

REVIEW OF DOMESTIC LEGISLATION

715. The Committee urges States Parties, as a matter of urgency, to enact or repeal their legislation in order to prohibit all forms of violence, however light, within the family and in schools, including as a form of discipline, as required by the provisions of the Convention and in particular articles 19, 28 and 37(a) and taking into account articles 2, 3, 6 and 12 as well as 4, 5, 9, 18, 24, 27, 29 and 39.

716. The Committee recommends that such legislation incorporate provisions for appropriate sanctions for violations and compensation for victims.

717. The Committee urges States Parties to review all relevant child protection legislation to ensure that while effective protection is guaranteed, intervention is adequately tailored to individual contexts and circumstances, favours the least intrusive method, and adopts a positive approach that seeks to protect the child from additional harm. The Committee recommends that States Parties review legislation dealing with children deprived of a family environment to ensure that all placement decisions are subject to periodic judicial review, including at the request of children themselves, and with family reunification as the preferred outcome, within the requirements of articles 3, 9, 19 and 39 of the Convention.

718. The Committee recommends careful monitoring of the effective implementation of such legislation, including through *inter alia* the provision of education, training and resources.

PREVENTION: AWARENESS-RAISING, SENSITIZATION AND TRAINING

719. The Committee recommends that States Parties adopt clear national policy statements on violence against children within the family and in schools, to be used as an advocacy tool and disseminated throughout the country.

720. The Committee recommends that every State Party undertake a comprehensive study on the extent, nature, causes and consequences of violence against children. This study should be widely disseminated and used to formulate policy and programmes.

721. The Committee encourages States Parties, NGOs, United Nations human rights mechanisms, United Nations agencies and other bodies to give priority to promoting a more positive approach to acknowledging children as bearers of human rights and to raising awareness about and bringing about change in cultural attitudes towards protecting children from violence and the availability of more constructive and effective methods of discipline. Such an approach should include the following:

(a) Public information campaigns should be launched, involving religious, traditional and community leaders, to raise awareness and sensitize the public about the severity of human rights violations and the harm to children in this domain, and to address cultural acceptance of violence against children, promoting instead the unacceptability of all forms of violence against children.

(b) Children and parents should be meaningfully involved in all aspects of the design and implementation of awareness-raising campaigns, including through peer education efforts.

(c) The media should be encouraged to play an active role in educating the public and raising awareness. Reporting should call attention to the violations and reflect children's views and experiences of violence, while avoiding sensationalism and ensuring respect for the right to privacy of child victims. The media and entertainment industry should also avoid disseminating positive images of any form of violence.

(d) States Parties should translate appropriate information on protection of children from violence into its national and local languages, and ensure that it is disseminated, through all appropriate channels and involving grass roots groups, to all relevant professional and other reporting groups, children, parents, and the general public…."

Other sections cover international actions – including further detail on the Committee's proposal for an international study; other prevention and protection strategies; monitoring and complaint mechanisms; coordination and resources; and role of civil society. (Committee on the Rights of the Child, Report on the twenty-eighth session, September/October 2001, CRC/C/111, paras. 701 et seq.)

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 19, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 19 is relevant to **departments of social welfare, justice, health, education)**?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 19 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 19 likely to include the training of **all those working in child protection or with or for children and their families, and in parenting education**)?

• Specific issues in implementing article 19

- ☐ Does legislation in the State protect children from all forms of physical or mental violence?
- ☐ Has the State ensured there are no exceptions or defences available to parents or others in relation to assaults on children?

Does legislation protect all children from any form of corporal punishment and any other form of cruel or degrading punishment or treatment:

- ☐ in the home?

in schools

- ☐ state run?
- ☐ private?

in child-care institutions

- ☐ state run?
- ☐ private?

How to use the checklist, *see page XIX*

- ☐ in foster care?
- ☐ in other forms of alternative care?

in day care institutions

- ☐ state run?
- ☐ private?
- ☐ other arrangements (e.g. childminding etc.)?

in the penal system

- ☐ as a sentence of the courts?
- ☐ as a punishment in penal institutions?

Does legislation, policy and practice protect all children from

- ☐ ill-treatment and violence, including violence by other children, in schools and all other institutions?
- ☐ traditional practices involving physical or mental violence, or prejudicial to health?

☐ Has the State taken appropriate measures to prevent all forms of violence to children?

Has the State taken appropriate educational and other measures to promote positive, non-violent forms of discipline and treatment

- ☐ in the family?
- ☐ in alternative care?
- ☐ in all institutions which include children?

Do all children in the State have access to effective complaints procedures in relation to ill-treatment

- ☐ while in the care of parents or others legally responsible for them?
- ☐ in all forms of alternative care?
- ☐ in all institutions including schools and custodial institutions?

☐ In cases of ill-treatment, do children have a right to appropriate remedies, including, for example, compensation?

Does legislation in the State require the reporting of all forms of violence and abuse of children to appropriate bodies:

- ☐ by certain professional groups?
- ☐ by all citizens?

☐ Have any reporting arrangements/requirements been reviewed in the light of the Convention's principles, including article 12 (respect for the views of the child) and article 16 (the child's right to privacy)?

Has the State established effective systems for

- ☐ identification of violence, abuse, etc.?
- ☐ reporting?
- ☐ referral?
- ☐ investigation?
- ☐ treatment and follow-up?
- ☐ appropriate judicial involvement?

How to use the checklist, *see page XIX*

article 19

- ☐ Has the State taken particular measures to identify and respond to sexual abuse within the family and in institutions?
- ☐ Has the State ensured that the principle of respect for the views of the child is observed in child protection procedures and practice?
- ☐ Has the State taken special measures to encourage responsible reporting of child abuse by the mass media?
- ☐ Has the State established or supported confidential helplines, advice and counselling for child victims of violence, abuse or neglect?
- ☐ Has the State considered its law, policy and practice in the light of the recommendations of the United Nations Secretary-General's Study on Violence Against Children (A/61/299)?

Reminder: **The Convention is indivisible and its articles interdependent. Article 19 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 19 include:

Article 5: parental responsibilities and child's evolving capacities
Article 9: separation from parents following abuse or neglect
Article 18: parental responsibilities
Article 20: alternative care
Article 24(3): protection of children from traditional practices
Article 25: periodic review of placement or treatment
Article 28(2): school discipline without violence
Article 34: protection from sexual exploitation
Article 37: protection from torture and inhuman or degrading treatment or punishment
Article 38: armed conflict
Article 39: rehabilitative care for victims of violence
Optional Protocols to the Convention on the Rights of the Child

Children deprived of their family environment

Text of Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, *foster placement, kafalah of Islamic law, adoption or, if necessary, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.*

Article 20 concerns children who are temporarily or permanently unable to live with their families, either because of circumstances such as death, abandonment or displacement, or because the State has determined that they must be removed for their best interests.

Such children are entitled to "special protection and assistance". The method of care for them will depend in part on national traditions (for example Islamic law does not recognize adoption, and guardianship preserving the original family relationship is common in Central and Eastern Europe), but must secure the child's rights under the Convention and, in particular, give due regard to the desirability of continuity of upbringing including ethnicity, religion, culture and language (see articles 21, 8 and 30).

The article principally applies to the social work or welfare departments of government and to social workers, foster caregivers and adoptive parents. In 1986 the General Assembly agreed the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally which sets out basic principles in this field. In 2005 the Committee on the Rights of the Child also held a Day of General Discussion on "Children without parental care" in which it proposed United Nations guidelines on this topic. Draft United Nations Guidelines for the Care and Protection of

Summary

Children without Parental Care (the working title) were prepared by the International Social Service and UNICEF, in collaboration with the NGO Working Group on Children without Parental Care, and revised by the Committee on the Rights of the Child at its forty-second session, May 2006. This draft will be considered and revised by United Nations Member States.

Committee members have also recommended States should draw upon the United Nations publication *Human Rights and Social Work: A Manual for Schools of Social Work and the Social Work Profession.* This Manual references all the relevant international and regional rights instruments and sets out basic principles and issues, as well as providing training materials in terms of testing questions and case vignettes. ■

Children who are temporarily or permanently deprived of, or removed in their best interests from, their family environment

It should be noted that this provision refers to family, not parents, an important distinction. While it may be in the child's best interests to be removed from his or her parents (see article 9, page 122), the State should first seek placement in the child's wider family, as upheld in article 5 (page 76), before looking for alternatives. Article 4 of the 1986 Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally states: "When care by the child's own parents is unavailable or inappropriate, care by relatives of the child's parents, by another substitute – foster or adoptive – family or, if necessary, by an appropriate institution should be considered." This suggests a hierarchy of options: first, family relatives, including older children (for example in child-headed families orphaned by the AIDS epidemic); second, substitute family through fostering or adoption; and third, an appropriate institution. This approach is reflected in the provisions of article 20 and the rest of the Convention, as well as in comments by the Committee, which has consistently encouraged States to use institutions only as a last resort (see also box with extracts from its General Discussion on "Children without parental care", page 279):

"The Committee recommends that the State Party... put more focus, inter alia, *on:*
(a) Effective support programmes for children in vulnerable families, such as those affected by HIV/AIDS, single-parent families and families suffering from poverty,
(b) Effective support to extended families which care for children of parents who have died of AIDS and for child-headed families,
(c) The promotion and support for family-type forms of alternative care for children deprived of parental care, in order to reduce the resort to residential care." *(Uganda CRC/C/UGA/CO2, para. 42)*

And it encouraged Panama

"... to develop and implement a comprehensive policy for the family to protect their children's rights which would include:
(a) Measures to strengthen the competence of parents and to provide them with the necessary material assistance and support in that regard, with particular attention to poor families and female-headed households;
(b) Measures to make fathers more aware of their parental responsibilties and to ensure that they provide the necessary financial child support;
(c) Measures to provide children who cannot be raised by their natural parents with an alternative family environment by organizing an effective system of good quality foster care, including kinship care..." *(Panama CRC/C/15/Add.233, para. 36)*

As discussed in article 9 (page 123), poverty is not a 'best interests' reason to deprive children of their family environment. As the Committee put it, in the Day of General Discussion on "Children without parental care":

"The Committee is deeply concerned about the fact that children living in poverty are over-represented among the children separated from their parents both in the developed and developing contries. It acknowledges that separation from parents is in many cases involuntary due to social and economic strains. It also notes with concern that tough social and economic conditions may lead to the abandoment of the child and a high number of street children. Poverty can create a vicious circle. Parents living in poverty do not necesssarily dare to approach authorities and ask for help because they are afraid of losing their children. Without external assistance and support the situation may end up separating children from their parents. In addition the Committee notes that the socially and/or economically disadvantaged families are rarely involved in the policy-making processes and lack opportunitities to affect the policy makers." *(Committee on the Rights of the Child, Report on the fortieth session, September 2005, CRC/C/153, para.658)*

The Committee has also expressed concern at laws that enable parents to abdicate responsibility for their children and place them in state care, for example Belize:

"... The Committee expresses serious concern about the provisions of the [legislation] on

Children without parental care

Committee on the Rights of the Child, Day of General Discussion, 2005: extracts

"The Committee is concerned that the institutionalization of children is used systematically. The Committee acknowledges that there has been a general agreement that the family environment provides the best possibilities for the harmonious development of the child, but between the family of origin and the placement in institution, options have to be found. These options could include the traditional placement in the family or in the extended family, open centres, the placement for day or night, emergency placement, temporary stay solutions, etc. Many of these options already exist. The Committee wishes to refer to many countries where the cultural values cherish the solidarity within the family or in the community and it encourages States Parties to examine these inspiring examples and possibilities with a view to providing children with the individual care solutions.

In the context of children separated from their parents, the Committee wishes to emphasize the principle of individualization. Every child is unique and the separation from parents and the placement into out-of-home care should always be looked at case by case. There is no one solution which fits all situations. The individualization of solutions means more tailored solutions based on the actual situation of the child, including her/his personal, family and social situation. This provides better opportunities for the assessment of the child's long-term development and it respects the principle of the best interests of the child, e.g., what are the actual needs of the child, how to keep a close relationship with the biological family.

However, there are obstacles standing in the way of this ideal path towards individualization of solutions, such as the lack of time, including no time to carry out assessment of the actual situation, the lack of personnel, places in families, temporary and emergency measures and reception homes… However, the Committee notes with concern that one important obstacle is often our pattern of thought, among other things, the lack of creativity, the lack of will to change old habits and customs and gaps in the training or in the knowledge of existing resources."

(Committee on the Rights of the Child, Report on the fortieth session, September 2005, CRC/C/153, paras. 665, 667 and 668)

"uncontrollable behaviour" according to which parents are able to seek institutional care... for a child beyond parental control.
"The Committee urges the State Party to provide parents and children with adequate knowledge, skills and support services and to review its legislation, practices and services with a view to eliminating the concept and expression 'uncontrollable behaviour' of children and to gradually preparing for 'deinstitutionalization'." *(Belize CRC/C/15/Add.252, paras. 42 and 43)*

This sort of legislation also represents a breach of article 9, which requires independent judicial review of such placements.

The new Convention on the Rights of Persons with Disabilities, adopted in December 2006, also makes clear that the disability of either parent or child is not sufficient reason for removing the child from his or her family: "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents." (Article 23(4))

Such children shall be "entitled to special protection and assistance"

The use of the word "entitled" stresses the obligation the State has towards children who cannot be cared for by their parents. It goes to the heart of the duty all societies owe children – that if parents cannot meet their children's needs then the children have a moral claim on the rest of us. Article 3(2) establishes this general obligation: "States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents..." The Committee's Day of General Discussion on "Children without parental

care" stressed the principle of "individualization" – that each child is unique and all placements should be considered in response to their individual needs (see box page 279).

Children who have been deprived of their families often have greater needs than simply the provision of an alternative placement. The loss of family attachments and identity together with the instabilities and disruptions of a new placement can impede their physical, intellectual and emotional development; children in such circumstances are also vulnerable to abuse and exploitation. When deciding to hold a Day of General Discussion on "State violence against children" in September 2000, the Committee commented:

"Unfortunately it is often children deprived of family protection who are the most common victims of the worst forms of mistreatment and abuse, and too often such abuse takes place either at the hands of state agents or is made possible by their approval, tolerance or neglect." (Committee on the Rights of the Child, Report on the twenty-fifth session, September/ October 2000, CRC/C/100, para. 668)

The Committee has expressed concern about this, for example to Burundi:

"Recognizing the large numbers of orphans and other children in need of alternative care in the State Party, the Committee is deeply concerned at violations of child rights that occur in the context of alternative care, at the lack of systematic monitoring of the situation of children in institutions or informal foster families, at the use of children for labour in some informal foster families and at reports indicating that many of these children do not have adequate emotional support or access to health and education services." (Burundi CRC/C/15/Add.133, para. 50)

Even children in the care of rich States with highly developed welfare systems may suffer. The Committee expressed concern to Denmark about the "increasing number of children placed in out-of-home care":

"... It is particularly concerned that:
(a) A thorough assessment of the need for out-of-home placement does not always take place;
(b) A significant number of young children (0-7 years) have experienced three or more placements;
(c) Children of ethnic minorities are over-represented in alternative care facilities;
(d) Contact between the child and her/his parents is very limited." (Denmark CRC/C/DNK/ CO/3, para. 33)

"... shall in accordance with their national laws ensure alternative care... such care could include, *inter alia*, foster placement, *kafalah*, adoption, or if necessary, placement in suitable institutions for the care of children"

The *Guidelines for Periodic Reports (Revised 2005)* requires States to provide relatively detailed information on this aspect of their responsibilities:

"With reference to children separated from parents, States Parties should provide data… on the:

(a) Number of children without parental care disaggregated by causes (i.e. due to armed conflict, poverty, abandonment as a result of discrimination, etc.);

(b) Number of children separated from their parents as a result of court decisions (*inter alia*, in relation to situations of detention, imprisonment, exile or deportation);

(c) Number of institutions for these children disaggregated by region, number of places available in these institutions, ratio of caregivers to children and number of foster homes;

(d) Number and percentage of children separated from their parents who are living in institutions or with foster families as well as the duration of placement and frequency of its review;

(e) Number and percentage of children reunited with their parents after a placement;

(f) Number of children in domestic (formal and informal) and intercountry adoption programmes disaggregated by age and with information on the country of origin and of adoption for the children concerned." (CRC/C/58/Rev.1, para. 12, pp. 12 and 13)

During the drafting of article 20, the delegate from the United States of America made a proposal that States should have to "facilitate permanent adoption" of children in care. The proposal was rejected on the grounds that adoption is not the "only solution" when children cannot be cared for by their families. Even the milder proposal that children should have a right to a "stable family environment" did not survive to reach the final text. (E/1982/12/Add.1, C, pp. 56 to 59; Detrick, p. 299)

Adoption is unrecognized by Islamic law, which has developed instead the concept of *kafalah* – a permanent form of foster care that generally stops short of the child taking the family name or having inheritance rights. Notwithstanding the non-prescriptive nature of the list of possible placements,

four Arab States (Brunei Darussalam, Egypt, Jordan and Syrian Arab Republic) have entered explicit reservations to article 20 on the grounds that adoption is incompatible with the principles of Islam (CRC/C/2/Rev.8, pp. 16, 21, 26 and 39).

While accepting the viability of *kafalah*, the Committee has, nonetheless, queried the treatment of some children cared for in this way:

"The Committee welcomes the adoption of [new legislation] which regulates the kafalah system, but is concerned that its implementation may encounter difficulties. In addition, the Committee is concerned that in practice more girls than boys benefit from kafalah.
"The Committee recommends that the State Party take all necessary measures to fully implement the new [legislation] on the kafalah *system in order to ensure that:*
(a) A judicial decision is at the origin of the placement of the child;
(b) All social benefits are attributed to these children in the same way as is done for other children;
(c) Effective mechanisms to receive and address complaints from children are established, standards of care are monitored and... placement is reviewed periodically;
(d) Boys and girls are given the same opportunities under kafalah*."* (Morocco CRC/C/15/Add.211, paras. 38 and 39)

"While acknowledging with appreciation the kafalah *system, the Committee is concerned that its application does not ensure the full enjoyment of all rights provided by the Convention...*
"The Committee recommends that the State Party continue to develop and implement legislative and other measures, policies and procedures to ensure that children receive, when necessary, adequate alternative care, preferably in their own immediate families or extended families or in kafalah*, which fully respects the provisions of the Convention, in particular articles 20 and 21..."* (Saudi Arabia CRC/C/SAU/CO/2, paras. 48 and 49)

The Convention on the Rights of the Child specifically addresses adoption in the next article, article 21 (page 293). As regards foster care, articles of the 1986 Declaration provide:

"6. Persons responsible for foster placement or adoption procedures should have professional or other appropriate training...

10. Foster placement of children should be regulated by law.

11. Foster family care, though temporary in nature, may continue, if necessary, until adulthood but should not preclude either prior return to the child's own parents or adoption.

12. In all matters of foster family care, the prospective foster parents and, as appropriate, the child and his or her own parents should be properly involved. A competent authority or agency should be responsible for supervision to ensure the welfare of the child."

Even though children are probably more exposed to violence or neglect in institutions, the vulnerability of children in foster care should not be underestimated. The Committee on the Rights of the Child has raised such concerns, for example:

"The Committee notes with concern that foster care has not yet been institutionalized or standardized and that the organizations involved are generally left to develop their own individual systems of monitoring and recruitment. The Committee ... recommends that the State Party develop a clear policy with respect to foster care and introduce measures to ensure a standardized approach with respect to recruitment, monitoring and evaluation under existing foster care programmes." (Mali CRC/C/15/Add.113, para. 22)

"The Committee recommends that the State Party develop additional programmes to strengthen its alternative care facilities, in particular an adequate and well-supported (e.g,. via special grants for foster parents) foster care system." (Lesotho CRC/C/15/Add.147, para. 38)

Foster placement can also be used to disguise one of the more hidden aspects of child abuse – children being kept as domestic workers in conditions of near slavery (see article 32, page 480) or systems, like that of 'confiage' in Burkina Faso or 'restavek' children in Haiti, where children are routinely sent to live with wealthier families as servants. The State is not absolved of responsibility because parents have arranged the placement:

"While noting the positive aspects of the placement of children in informal foster care, in particular of children from rural areas, for educational reasons, the Committee is concerned at the lack of adequate monitoring to prevent possible abuse of these children, such as their use as domestic workers.
"The Committee recommends that the State Party undertake the necessary measures to establish outside supervision of these placements, in order to prevent the child being abused by his/her foster family." (Comoros CRC/C/15/Add.141, paras. 29 and 30)

Those training foster caregivers and supervising foster placements should ensure that foster children are not treated as inferior to other children within the family or exploited as domestic workers.

Article 25, in relation to children placed by "competent authorities for the purposes of care, protection, or treatment of his or her physical or mental health," calls for "a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement". The task of the State is not over once a child has been placed in alternative family care or an institution. Too many children have failed to thrive, or have even suffered abuse, following such placements, so continual monitoring is essential for each individual child (see page 380). In addition, the institution or foster carers must be subject to independent oversight. Article 3(3) requires States Parties to ensure that "the institutions, services and facilities responsible for the care or protection of children, shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision" (see page 41).

In its Concluding Observations to Lithuania the Committee summarized its recommendations regarding alternative care, applicable to all States:

"The Committee recommends that the State Party:
(a) Ensure that institutionalization is used only as a measure of last resort, meaning that it is professionally indicated and in the best interests of the child;
(b) Systematically conduct periodic reviews of the placement of children, in conformity with article 25 of the Convention;
(c) Carry out a reform of the alternative care system and ensure that there are enough qualified supervisors and adequate resources for the proper functioning and monitoring of the system;
(d) Ensure that children, if they are raised in institutions, live in small groups and are individually cared for , that the parent-child relationship will not be negatively affected by placement in alternative care, and that family reunion or establishment of family environment is prioritized;
(e) Provide targeted services to children who will soon become adults and leave the institutions and encourage their reintegration into society;
(f) Strengthen and support the system of foster care, develop quality standards for foster care and significantly decrease the time spent in institutions by children without parental care;
(g) Provide adequate social and economic support to the social risk families, including through the establishment of a support network and the creation of job opportunities for these families;
(h) Consider creating a special fund to provide social service for a family in a crisis situation; and
(i) Adopt and implement the recommendations presented in the regional monitoring report 'A Decade of Transition' (2001) of the UNICEF Innocenti Research Centre on children under the state guardianship." (Lithuania CRC/C/LTU/CO/2, para. 42)

Institutional care

Article 20 implies, but does not spell out, that placement in "suitable institutions for the care of children" is the last resort, second best to placement in an alternative family. The qualifier "if necessary" is used, which reflects the fact that institutional care may sometimes be the best placement for some children – for example if the child has suffered multiple foster care breakdowns, or when large families of siblings wish to remain together, or for older children nearing independence. The Committee requires that States:

"… Ensure that the institutionalization of a child is a measure of last resort and only occurs when family-type measures are considered inadequate for a specific child, and that institutionalization is subject to regular review with a view to reassessing the possibility for reunification…" (Latvia CRC/C/LVA/CO/2, para. 33)

Institutionalization is particularly inappropriate for young children. The Committee's General Comment No. 7 on "Implementing child rights in early childhood" states:

"Research suggests that low quality institutional care is unlikely to promote healthy physical and psychological development and can have serious negative consequences for long term social adjustment, especially for children under 3 but also for children under 5 years old. To the extent that alternative care is required, early placement in family based or family like care is more likely to produce positive outcomes for young children. States Parties are encouraged to invest in and support forms of alternative care that can ensure security, continuity of care and affection, and the opportunity for young children to form long term attachments based on mutual trust and respect, for example through fostering, adoption and support for members of extended families." (Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 36)

In the Day of General Discussion on "Children without parental care", the Committee drew attention to

"… several groups of children in need of special support measures, such as children

with disabilities, children associated with drug abuse, street children, refugee children or asylum-seeking children and children infected with or affected by HIV/AIDS. These children are often placed in big institutions due to their social and health status without evaluating the actual situation case by case…" (Committee on the Rights of the Child, Report on the fortieth session, September 2005, CRC/C/153, para. 670)

In its General Comment No. 3 on "HIV/AIDS and the rights of the child", the Committee, while accepting that sometimes institutionalization may be necessary, tells States that

"… strict measures are needed to ensure that such institutions meet specific standards of care and comply with legal protection safeguards. States Parties are reminded that limits must be placed on the length of time children spend in these institutions, and programmes must be developed to support any children who stay in these institutions, whether infected or affected by HIV/AIDS, to successfully reintegrate them into their communities." (Committee on the Rights of the Child, General Comment No. 3, 2003, CRC/GC/2003/3, para. 35)

Nepal, for example, was of deep concern to the Committee because

"… an increasing number of families and children are facing the risks of family disintegration and separation as a consequence of the current armed conflict in the State Party. The Committee is equally concerned at the increasing number of children placed in residential care facilities not only as a result of the armed conflict, but also of HIV/AIDS, and that many of these children still have both or one of the parents and/or close relatives. Furthermore the Committee is concerned that these residential care facilities do not meet the standards set by the State Party, and that many of them are not registered. The Committee is also concerned that adequate and effective monitoring of the quality of these facilities is lacking.

"The Committee recommends the State Party … to undertake effective measures for the reunification of separated families… and for the introduction of a foster care system that is well resourced, with adequately trained staff;… to ensure that residential care facilities meet quality standards in conformity with the Convention, that they are registered and regularly monitored and that the placement of children in these facilities is regularly reviewed … to ensure that such placement is only used as the last resort and for the shortest time possible." (Nepal CRC/C/15/Add.261, paras. 49 and 50)

The link between violence and institutionalization led the Committee to make the following recommendations in its Day of General Discussion on "State violence against children":

"The Committee recommends that, for children placed in institutions, consideration be given to the following:
(a) Small institutions caring for children in home-type settings often have a better record of caring for children;
(b) Smaller institutional settings, or the delivery of care and assistance to children and support to their families can be less costly and preferable for the full enjoyment of the human rights of children than institutionalization in large, sometimes impersonal institutions;
(c) A lesser number of better trained professionals can deliver more appropriate care to children than a large number of poorly trained or untrained workers;
(d) Efforts should be made to ensure contact between the child and his or her family (when appropriate) and to avoid the isolation of children in institutions (for example, by ensuring that education, recreation, or health services are provided outside the institution).
"… The Committee recommends that States Parties make every effort to ensure, in recruiting staff to care for children in all types of institutions, that due attention is given to the need to ensure the capacity of staff to make effective use of non-violent methods of discipline. Institutions should adopt anti-bullying and anti-violence strategies and policies, and provide training for staff in their implementation." (Report on the twenty-fifth session, September/October 2000, CRC/C/100, 688.22 and 688.24)

This concern is reflected in the United Nations Secretary-General's Study on Violence Against Children, which recommends that alternatives to institutions should be found for children wherever possible, because of the high risk of violence:

"As many as 8 million of the world's children are in residential care. Relatively few are in such care because they have no parents, but most are in care because of disability, family disintegration, violence in the home, and social and economic conditions, including poverty.

"Violence by institutional staff, for the purpose of "disciplining" children, includes beatings with hands, sticks and hoses, and hitting children's heads against the wall, restraining children in cloth sacks, tethering them to furniture, locking them in freezing rooms for days at a time and leaving them to lie in their own excrement.

"In residential institutions, children with disabilities may be subject to violence in the guise of treatment. In some cases children as young as nine are subjected to electroconvulsive treatment (ECT) without the use of muscle

relaxants or anaesthesia. Electric shocks may also be used as "aversion treatment" to control children's behaviour. Drugs may be used to control children's behaviour and make them more "compliant", leaving them less able to defend themselves against violence

"Neglect is also a feature of many residential institutions where conditions are so poor that they put the health and lives of children at risk. In many facilities for children with disabilities, there is no access to education, recreation, rehabilitation or other programmes. Children with disabilities are often left in their beds or cribs for long periods without human contact or stimulation. This can lead to severe physical, mental and psychological damage.

"Children in residential care are vulnerable to violence from other children, particularly when conditions and staff supervision are poor and older, more aggressive children are not separated from younger or more vulnerable ones. Staff may sometimes sanction or encourage peer abuse among children." (Report of the independent expert for the United Nations study on violence against children, General Assembly, sixty-first session, August 2006, A/61/299, paras. 55 to 59)

If children are placed in institutions, then the State must take measures to ensure that they are provided with well-trained staff, that the children's needs are met and their quality of life is good and that they are protected from abuse (see also article 3(3), page 41):

"The Committee recommends that the State Party establish a code of standards to ensure that children deprived of a family environment receive adequate care and protection. The Committee recommends that the State Party reinforce its efforts to provide additional training, including in children's rights, for the staff of institutions; ensure the periodic review of placements in institutions; and establish an independent complaint mechanism for children in alternative care institutions. The Committee encourages the State Party to introduce measures to guarantee and protect the human dignity of children living in institutions and to make these institutions more child friendly. The State Party is also encouraged to increase the level of resources allocated for the protection and care of children deprived of a family environment..." *(Georgia CRC/C/15/Add.124, para. 35)*

All institutions must conform to minimum standards of care, and the State must secure effective inspection mechanisms to check on children's welfare in all institutions, state, voluntary or private (see article 3, page 35). For example, the Committee raised its concerns with Guyana:

"While welcoming the establishment of a Visiting Committee, the Committee notes with concern the lack of standards for minimum care in institutions and of systematic supervision and oversight, particularly in private institutions.
"The Committee recommends that the State Party:
(a) Strengthen the role of the Visiting Committee, e.g., by assigning to it a standard-setting role, and provide it with sufficient human and financial reserves;
(b) Provide institutions run by NGOs with adequate financial and other support and bring them under the inspection and standard-setting role of the Visiting Committee."
(Guyana CRC/C/15/Add.224, paras. 35 and 36)

It is particularly important for all institutions where children are living to implement the principles of article 12. The natural way in which family members talk and listen to each other, and particularly parents listen to their children, cannot easily be replicated in more formal living institutions. Deliberate steps must be taken to ensure that staff hear and take proper account of the children's views and respect their civil rights. For example, the Committee observed to Finland:

"The Committee notes that children are often placed in alternative care without their views being adequately taken into account...
"The Committee... recommends that the State Party sufficiently take into account children's views in any decision regarding their placement in alternative care." *(Finland CRC/C/15/Add.272, paras. 28 and 30)*

And recommended that Poland:

"... Establish procedures to ensure that children currently residing in institutions that are being closed down are fully informed and able to participate in deciding their future placement, and that these children retain their right to social protection." *(Poland CRC/C/15/Add.194, para. 37)*

One unfortunate outcome of a childhood spent in institutions is that the child finds independent life in the ordinary world difficult, sometimes impossibly so. The Committee has noted this:

"... The Committee is concerned by reports about the extremely low quality of many institutions and by the fact that children previously in state care subsequently are overrepresented among the homeless.
"... During placement in institutions children should be assisted in maintaining contact with their families with a view towards achieving reintegration. The quality of institutions needs to be improved, staff should be offered additional training, psychosocial assistance should be providing for the children and

the education provided should seek to prepare children for an independent life in adulthood. The children affected should be directly consulted throughout the period of institutional placement." (Hungary CRC/C/HUN/CO/2, paras. 31 and 33)

The Committee encouraged Armenia

"... to implement plans to offer one-room apartments free of charge for a period of 10 years to children discharged from children's homes" (Armenia CRC/C/15/Add.225, para. 36)

and Kazakhstan to

"... provide adequate follow-up and reintegration support and services to children who leave institutional care." (Kazakhstan CRC/C/15/Add.213, para. 44)

Other Convention provisions, for example article 2 (protection from discrimination), article 13 (freedom of expression), article 16 (right to privacy) and article 19 (protection from violence), should secure that institutions do not adopt measures that are prejudicial to the child's normal development and socialization, for example requiring the children to wear uniforms, or revealing children's personal history to their schools or other inmates, or using inappropriate controls or sanctions (such as corporal punishment, restriction of liberty, or the use of tranquillizing drugs or the deprivation of food, sleep or contact with family).

Deprivation of liberty

Article 37 addresses the rights of children deprived of their liberty, which includes "arrest, detention or imprisonment". The United Nations Rules for the Protection of Juveniles Deprived of their Liberty provides a more precise definition: "The deprivation of liberty means any form of detention or imprisonment or the placement of a person in another public or private custodial setting from which this person is not permitted to leave at will by order of any judicial, administrative or other public authority." Many children in institutions, including mental health institutions, are subjected to rules and administrative orders preventing them from leaving the establishment, that go beyond family-type rules intended to safeguard their welfare (for example, forbidding them to go out late at night). Where children are deprived of their liberty in institutions the provisions of article 37 (page 547) and of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (endorsed by the Committee) should apply, even though these institutions operate outside the penal system.

The Committee has expressed concern to a number of countries about their failure to separate children who are in need of care from children who have committed offences, for example Argentina and Antigua and Barbuda:

"... the Committee is deeply concerned that [Argentine laws] are based on the doctrine of 'irregular situation', do not distinguish between children in need of care and protection and those in conflict with the law." (Argentina CRC/C/15/Add.187, para. 40)

"The Committee is seriously concerned that no safe houses or places of alternative care exist for boys who suffer from parental neglect or who need to be removed from their family environment, and that they are generally placed in the facility for boys in conflict with the law." (Antigua and Barbuda CRC/C/15/Add.247, para. 41)

Children with disabilities

Children with disabilities are vulnerable to abandonment by parents, either at birth or when they are older, often because the parents have inadequate support or are frightened that they will not be able to cope. Also, traditions and cultures sometimes express prejudice or hostility towards people with disabilities, encouraging parents to abdicate responsibility for a child with disabilities. Social workers may find that foster caregivers are reluctant to accept children with disabilities and small, home-like institutions may not have the staff or facilities to receive them. As a result such children may end up living in large or uncaring institutions (see article 23, page 321).

The Convention on the Rights of Persons with Disabilities, adopted in December 2006, upholds rights to family life, covering not only children with disabilities but also the children of parents with disabilities. The Convention makes clear that disability is not a sufficient ground for removing the child in either case, and that where children with disabilities are in the care of the State, institutionalization should be a last resort:

"(3) States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

(4) States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

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(5) States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting." (Article 23)

Rule 9(1) of the complementary Standard Rules on the Equalization of Opportunities for Persons with Disabilities provides: "Persons with disabilities should be enabled to live with their families. States should encourage the inclusion in family counselling of appropriate modules regarding disability and its effects on family life. Respite-care and attendant-care services should be made available to families that include a person with disabilities. States should remove all unnecessary obstacles to persons who want to foster or adopt a child or adult with disabilities."

These points are reiterated in the Committee's General Comment No. 9 on "The rights of children with disabilities" (CRC/C/GC/9, paras. 47 to 49).

Thus States should first ensure that all measures of support have been taken to keep a child with disabilities within his or her family. It should perhaps be noted that expenditure on such measures is often cost-effective in the long term. The social-care services should ensure that foster caregivers are trained and encouraged to accept placements of children with disabilities and that small "family" institutions are equipped and staffed to receive children with disabilities alongside children without disabilities.

The Committee took up this issue with Ukraine and Turkmenistan

"The Committee is concerned about the absence in Ukraine of a programme involving social work. In particular, the Committee expresses its concern at the situation of the institutionalization, treatment and protection of handicapped children. Alternatives to institutionalization are not sufficiently taken into account; support services to parents who keep their handicapped child at home are inadequate." (Ukraine CRC/C/15/Add.42, para. 13)

The Committee reiterated these concerns in its consideration of the Second Report, made worse by the

"... considerable reduction in the resources allocated to residential homes". (Ukraine CRC/C/15/Add.191, paras. 46 to 48, 53 and 54)

"The Committee... is concerned that children with disabilities are over-institutionalized and that there is a lack of disability specialists. "The Committee recommends that the State Party... undertake efforts to establish and implement alternative measures to prevent the institutionalization of children with disabilities, including community-based rehabilitation programmes and home-based care..." (Turkmenistan CRC/C/TKM/CO/1, paras. 49 and 50)

Children who live and/or work on the streets

The phenomenon of "street children" (see article 2, page 30 for discussion of this term) is not addressed explicitly within the Convention on the Rights of the Child, but the number of children living or working on the streets of cities in almost all countries of the world is large and growing. This is a source of great concern to the Committee on the Rights of the Child, which has begun to give the topic its own separate section in Concluding Observations. The Committee now raises the issue with almost all poor countries but it has noted that the cities of rich countries also have populations of homeless or runaway children – for example it commented on the high percentage of foreign children who are street children in Germany (Germany CRC/C/15Add.226, para.59) and it recommended that Australia

"... intensify its efforts to address the urgent needs and rights of homeless children especially with regard to their housing, health and education. Furthermore, the State Party should provide homeless children with adequate recovery and social reintegration services for physical, sexual and substance abuse and to promote reunification with their families, when feasible." (Australia CRC/C/15/Add.268, para. 66)

Children who live on the streets do not, as is commonly believed, automatically fall within the scope of article 20 because they are not necessarily "deprived of their family environment". For example, a Namibian survey of 515 "street children" found that: "Almost all of the children surveyed had a family to which they returned on a regular basis, and most came from families of five or more children. About half of the children came from single-parent families, most of these being households headed by mothers, who are often more vulnerable than men to unemployment..." (Namibia CRC/C/3/Add.12, paras. 190 to 192) In such cases, economic want has driven them on to the streets and damage is sometimes caused by States or non-governmental organizations' intervention because it is assumed that any child found roaming the streets must be removed to a permanent alternative home. On the other hand family reunification is sometimes not the best solution, for example if the child has been abused or rejected by the family. As the Committee points out, it is essential to listen and respond to the child's individual history and views, recommending to the Russian Federation that it:

"Promote and facilitate the reunification of street children with their parents and other relatives or provide alternative care, taking into account the children's own views." (Russian Federation CRC/C/RUS/CO/3, para. 75)

And it urged Uganda to ensure children's views informed general strategy, recommending that the State

"... Develop and implement with the active involvement of street children themselves a comprehensive policy which, inter alia, *should address the root causes, in order to prevent and reduce this phenomenon, and which should provide street children with the necessary protection, adequate health-care services, education and other social services..."* (Uganda CRC/C/UGA/CO/2, para. 72)

Today, most projects offering assistance to "street children" take a considered and careful approach, looking both at the children's need to maintain relationships with their families and communities, and at the children's own sense of independence and self-reliance. Such projects increasingly advocate and support the principles of the Convention, which uphold children's autonomy as individuals and their civil rights and also which support the child's family. Projects tend to be based in the locality of the child's street existence, providing practical services while supporting the child's ability to control the pace of change and encouraging rehabilitation with their families or communities. The Committee recommends that States take an equally sensitive response, as shown in this recommendation to Lebanon:

"The Committee recommends that the State Party continue its efforts to address the issue of street children, with the aim of protecting these children and reducing their number:
(a) By adopting a comprehensive national strategy to address the situation of street children and provide these children with official documents and adequate assistance, including recovery and social reintegration services for physical, sexual and substance abuse, as well as vocational and life-skills training, in order to support their full development;
(b) By refraining, as a matter of policy, from detaining children begging in the streets and seeking alternative forms for their detention, that are fully compatible with the provisions of the Convention;
(c) By undertaking an action-oriented study to identify the root causes and magnitude, as well as the personal characteristics, of street children in order to prevent this phenomenon, and providing them with opportunities for reunification with their family when this is in the best interests of the child; and
(d) By collaborating with non-governmental organizations working with street children in the State Party and with children themselves, and seeking technical assistance from relevant United Nations and other international organizations." (Lebanon CRC/C/LBN/CO/3, para. 78)

As can be seen from this set of recommendations, the challenge to States is twofold: to reduce the numbers of children on the streets by finding better alternatives to the street, but also to protect them while they are living and working on the streets. These children face huge difficulties: state services, such as health care or welfare benefits, are often denied them because they lack identification or a place of residence; they are often subject to persecution or discrimination by other citizens and sometimes outright violence from law enforcement officers; they are vulnerable to sexual exploitation and to drug abuse; they may be recruited by street gangs or criminal organizations. The Committee has expressed deep concern whenever it finds the State is implicated in oppressive measures, for example:

"Noting that begging is an offence, the Committee is concerned that children who are picked up for this crime risk court proceedings, or placement in detention or orphanages." (Jordan CRC/C/15/Add.125, para. 51)

"... serious concern is expressed at allegations of rape, ill-treatment and torture, including murder for the purpose of 'social cleansing', of children living in the streets." (Guatemala CRC/C/15/Add.154, paras. 54)

"The Committee is extremely concerned at:... the increasing number of street children and unacceptable policies and programmes implemented by the juvenile affairs services to address this situation... the special preventive sweeps such as 'Lesson', 'Street children', 'Railway station' and 'Holiday' and at the keeping of a special data base of information on these children which is being considered as social assistance aimed at preventing abandonment and criminality..." (Ukraine CRC/C/15/Add.191, para. 69)

"According to the Law on Temporary Detention of Children without Supervision adopted in July 1994, a runaway child can be detained up to one week. The Committee recommends the State Party, as regards this [law]... refrain as a matter of policy from detaining runaway children..." (Mongolia CRC/C/15/Add.264, para. 62)

And it has recommended a number of protective measures:

"... the Committee recommends that the State Party ... provide the police services with training on children's rights so that the police can contribute to the protection of children

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from acts of violence or other abuse while on the street." (Burundi CRC/C/15/Add.133, para. 70)

"... consider addressing the situation of street children within the system of youth social welfare services rather than juvenile affairs services." (Ukraine CRC/C/15/Add.191, para.70)

"... Raise awareness of the issue of street children in order to change negative public attitudes about them, particularly among law-enforcement officers..." (United Republic of Tanzania CRC/C/TZA/CO/2, para. 62)

"... Establish an adequate mechanism to receive complaints from street children about cases of abuse and violence." (Trinidad and Tobago CRC/C/TTO/CO/2, para. 66)

The Committee's General Comment No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child" draws attention to the particular needs of homeless young people:

"Homeless adolescents are particularly vulnerable to violence, abuse and sexual exploitation from others, self-destructive behaviour, substance abuse and mental disorders. In this regard, States Parties are required to
(a) develop policies and enact and enforce legislation that protect such adolescents from violence, e.g. by law enforcement officials;
(b) develop strategies for the provision of appropriate education and access to health care, and of opportunities for the development of livelihood skills." (Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, para. 36)

Unaccompanied refugee and immigrant children

The Committee's General Comment No. 6 on "Treatment of unaccompanied and separated children outside their country of origin" addresses the fact that alternative care will have to be found for these children and says their care and accommodation arrangements must comply with the following principles:

- *"Children should not, as a general rule, be deprived of liberty;*
- *In order to ensure continuity of care and considering the best interests of the child, changes in residence for unaccompanied and separated children should be limited to instances where such change is in the best interests of the child;*
- *In accordance with the principle of family unity, siblings should be kept together;*
- *A child who has adult relatives arriving with him or her or already living in the country of asylum should be allowed to stay with them unless such action would be contrary to the best interests of the child. Given the particular vulnerabilities of the child, regular assessments should be conducted by social welfare personnel;*
- *Irrespective of the care arrangements made for unaccompanied or separated children, regular supervision and assessment ought to be maintained by qualified persons in order to ensure the child's physical and psychosocial health, protection against domestic violence or exploitation, and access to educational and vocational skills and opportunities;*
- *States and other organizations must take measures to ensure the effective protection of the rights of separated or unaccompanied children living in child-headed households;*
- *In large-scale emergencies, interim care must be provided for the shortest time appropriate for unaccompanied children. This interim care provides for their security and physical and emotional care in a setting that encourages their general development;*
- *Children must be kept informed of the care arrangements being made for them, and their opinions must be taken into consideration."* (Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, para. 40)

When considering solutions, due regard to be paid to "the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background"

This provision relates to article 7 (right to know and be cared for by parents, see page 97), article 8 (preservation of the child's identity, see page 113) and article 30, the right of children of minority or indigenous backgrounds under article 30 generally to enjoy their culture, practice their religion and use their language (see page 455). Unfortunately a number of countries have histories of violating this right, compulsorily removing children from indigenous or minority groups and placing them with well-off childless parents. Though perhaps well-intentioned, such actions reveal a crude racism and have caused damage to many children and adults.

The Committee raised these issues in its Day of General Discussion on "Children without parental care":

"Children feel better in their own environment and this should be taken into consideration when they are placed into out-of-home care. The basic premise is that children should be

kept in their own distinctive communities. For instance, indigenous communities often have a very close family system and the child protection system should take into consideration both indigenous culture, values and the child's right to indigenous identity..." *(Committee on the Rights of the Child, Report on the fortieth session, September 2005, CRC/C/153, para. 673)*

Continuity of upbringing implies continuity of contact, wherever possible, with parents, family and the wider community – achievable even when the child is adopted (see further discussion under article 21, page 298). Continuity of upbringing also implies finding a foster or adoptive home from the same cultural background, or ensuring that all or some members of the staff in an institution are from the same culture, and, preferably, that the institution itself is located in an appropriate community. The specifying of "linguistic background" is very important. Fluency in language is best – and often only – obtained during childhood, so every effort should be made to ensure that children learn their mother tongue even when placed with speakers of another language.

However a blanket policy that required children to be placed only with persons of the same ethnicity or religion would be incompatible with the flexibility inherent in the phrase "due regard". The best interests of the child, in terms of article 3(1), may not be served by the continuity of religion or culture – for example if the child has been removed from parents because of harmful religious or cultural practices or if the child has run away from home because of a clash with parental beliefs or practices. And once children have sufficiently evolved capacity, their own rights to determine their religion, as well as their rights to freedom of expression and association, should be respected under articles 13 to 15.

Continuity of upbringing also implies that the State should take all measures to avoid multiple placements of children in its care. When children have suffered the trauma of losing their family they may present behavioural problems that could result in them being passed from one foster home to another, or in their spiralling downwards, through increasingly restrictive institutions, which could then lead to further behavioural problems. Care must be taken to avoid such disruption in children's lives.

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 20, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 20 is relevant to the **departments of social welfare, education and health**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 20 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 20 likely to include the training of **social workers, adoption agency staff, staff of institutions, foster parents, teachers, police and medical personnel**)?

• Specific issues in implementing article 20

- ☐ Are parents provided with appropriate support to avoid the need to seek alternative care for the child?
- ☐ When children cannot be cared for by parents, are systematic efforts made to seek a placement with members of their wider family, with appropriate support where necessary?
- ☐ Where child-headed families occur, does the State provide the family with appropriate measures of support?
- ☐ Is there a legal obligation on the State to provide appropriate care for children deprived of their family environment?
- ☐ Are social services able to require assistance from health, education and other professionals in meeting the needs of children without families?
- ☐ Are those responsible for the placement of children without families appropriately trained?

How to use the checklist, *see page XIX*

Are the views of children obtained when
- ☐ alternative placements are being considered for them?
- ☐ alternative placements are chosen?
- ☐ alternative placements are being monitored?

☐ Are independent , child-friendly complaints systems available to protect children placed away from their family environment?
☐ Are foster parents fully investigated and authorized as appropriate before placement?
☐ Are foster parents recruited and encouraged to care for children with disabilities?
☐ Are foster parents trained to care for children with disabilities?
☐ Are foster placements regularly monitored?
☐ Are foster caregivers required to ascertain the views of the child in all matters affecting him or her and to give these views due weight?
☐ Does the State monitor the welfare of children fostered privately by parents?
☐ Are children placed in institutions only when necessary?
☐ Are institutional placements regularly monitored?
☐ Do all institutions caring for children have sufficient numbers of, and suitably qualified, staff?
☐ Are staff trained to secure children's rights under the Convention?
☐ Do such institutions respect children's human dignity, provide children with as normal a life as possible and take all measures to secure their integration in society?

For example, do such institutions prohibit
- ☐ the use of compulsory uniforms?
- ☐ child labour (which goes beyond normal domestic chores)?
- ☐ corporal punishment?
- ☐ restriction of liberty?
- ☐ the use of drugs for control purposes?
- ☐ deprivation of food?
- ☐ deprivation of sleep?
- ☐ deprivation of contact with families for control purposes?

☐ Are such institutions required to ascertain the views of the child in all matters affecting him or her and give these views due weight?
☐ Do all institutions, where possible, accommodate children with disabilities together with children without disabilities?
☐ Are changes in placements of children avoided if possible?
☐ Has the State adopted a strategy, in consultation with the children and organizations working with them, to address the situation of homeless children and children who live and/or work on the streets?
☐ Are these children provided with official documents and adequate assistance for their immediate protection and their social reintegration?
☐ Are these children the responsibility of social service authorities, not juvenile justice agencies?

How to use the checklist, *see page XIX*

☐ Do projects for these children ensure that the children, where possible and in their best interests, maintain contact with their families and communities?

When choosing or supporting a placement, do the social-work authorities pay due regard to the desirability of continuity in the child's upbringing in relation to

- ☐ the child's ethnic background?
- ☐ the child's religious background?
- ☐ the child's cultural background?
- ☐ the child's linguistic background?

(For example, by maintaining contact with the child's family, friends and community or, where this is not possible, by making special arrangements.)

Reminder: **The Convention is indivisible and its articles interdependent. Article 20 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 20 include:

Article 3(2) and (3): State obligations to provide protection and care and to ensure consistent standards in all placements and services for children
Article 7: right to know and be cared for by parents
Article 8: preservation of child's identity
Article 9: non-separation from parents except when necessary in best interests
Article 16: protection from arbitrary interference with privacy, family and home
Article 18: parents having primary and joint responsibility with appropriate state support
Article 21: adoption
Article 22: refugee children
Article 25: periodic review of placement
Article 30: children of minorities or indigenous peoples

Adoption

Text of Article 21

States Parties which recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in acordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that intercountry adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Summary

Article 21 addresses the rights of children who are adopted while recognizing that not all countries permit adoption. It establishes the paramountcy of children's best interests in all adoption arrangements and details minimum requirements for adoption procedures. Intercountry adoption is only to be considered if the child cannot be suitably placed in his or her own country.

The need of all young children for a family, and for a sense of security and permanency in their relationships, is recognized in most parts of the world and is celebrated in the Convention's

Preamble which asserts that the family is "... the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children" and that "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding." Adoption as the permanent solution to meet this need is, however, more controversial.

The Convention on the Rights of the Child remains neutral about the desirability of adoption: article 20 mentions it as one of the possible options for the care of children without families. It is clear that children's psychological need for permanency and individual attachments can be met without the formality of adoption; where adoption is used, it should be properly regulated by the State to safeguard children's rights. ■

States Parties which "recognize and/or permit the system of adoption"

There are those who believe that adoption is the best solution for children without families. For example, the delegate from the United States in the Working Group drafting the Convention proposed: "In cases where a child cannot be cared for by his parents or other members of his biological family, the competent authorities of States Parties shall take appropriate measures to facilitate permanent adoption of the child." (E/1982/12/Add.1, C, pp. 56 to 59; Detrick, p. 299)

At the other end of the spectrum of opinion are those States which operate in accordance with Islamic law and so do not recognize adoption at all. Others report abuses of adoption – for example, there are reports of "fake adoptions" to disguise the bonded labour of children. (Report of the Working Group on Contemporary Forms of Slavery, eighteenth session, Economic and Social Council, E/CN.4/Sub.2/1993/30, p. 33. See also article 32, page 479.) The Committee on the Rights of the Child has also expressed concern about abuse of adoption, for example:

"The Committee is concerned at ... the potential misuse of intercountry adoption for purposes of trafficking, inter alia, *for economic and sexual exploitation."* *(Russian Federation CRC/C/15/Add.110, para. 43)*

When examining Russia's Third Report, the Committee expressed continued concern about the lack of oversight of intercountry adoptions (Russian Federation CRC/C/RUS/CO/3, para. 42).

"Given the significant number of Nepalese children who are adopted by foreigners and in the context of the current armed conflict in the State Party, the Committee is concerned at the lack of a clear policy and appropriate legislation, which results in various practices, such as trafficking and smuggling of babies. The Committee also expresses concern regarding the practice of the so-called informal adoption, which may entail exploitation of children as domestic servants." *(Nepal CRC/C/15/Add.261, para. 53)*

Islamic law does not recognize the concept of an adoption which disguises the true parentage and blood relationships of a child. Children without families are able to live in permanent forms of foster care under *kafalah* which means in most Islamic States that they may not take the family name or have rights of inheritance (see article 20, page 280). Some countries, such as Lebanon, prohibit adoption for Muslims but permit it for non-Muslims (Lebanon CRC/C/8/Add.23, paras. 46 and 47). Notwithstanding the article's careful wording a number of States with Islamic populations entered a specific reservation to article 21, including Bangladesh, Brunei Darussalam, Indonesia, Jordan, Kuwait, Maldives and the Syrian Arab Republic (CRC/C/2/Rev.8, pp. 14 to 39). The Committee observed to Jordan:

"The Committee observes that the State Party's reservation to article 20 and 21 of the Convention is superfluous. It points out that article 20(3) of the Convention expressly recognizes kafalah of Islamic law as alternative care, and article 21 expressly refers to those States that 'recognize and/or permit' the system of adoption, which in any case does not apply to Jordan.
"The Committee recommends to the State Party to withdraw its reservation..." *(Jordan CRC/C/15/Add.125, paras. 10 and 11)*

Other countries have traditional forms of adoption which the State should ensure are consistent with the Convention. The Committee has encouraged Canada to withdraw its reservation to the provisions of article 21 "… to the extent that they may be inconsistent with customary forms of care among aboriginal peoples in Canada" (CRC/C/2/Rev.8, p. 16; Canada CRC/C/15/Add.37, para. 10). Following examination of its Second Report, Canada was urged "to continue its dialogue with the Aboriginals with a view to the withdrawal of the reservation" (Canada CRC/C/15/Add.215, para. 7).

The Republic of Korea, which does not have a significant Muslim population, entered a reservation that it did not "consider itself bound" to article 21(a). The Committee has expressed consistent concern that:

"… due to prevailing negative cultural traditions, domestic adoptions may be arranged without authorization or involvement of the competent authorities and that such arrangements do not necessarily take into account the best interests of the child or, where appropriate, the views of the child. "The Committee… calls for… a comprehensive review of the system of domestic and intercountry adoptions with a view to reforming legislation in order to bring it into full conformity with… the Convention…" (Republic of Korea CRC/C/15/Add.197, paras. 42 and 43)

The best interests of the child shall be the paramount consideration

In adoption the best interests of the child must be "the paramount" consideration rather than simply "a primary" consideration as in article 3. The provision establishes that no other interests, whether economic, political, state security or those of the adopters, should take precedence over, or be considered equal to, the child's. As Peru put it in its Second Report, "a family is found for the child, not a child for the family". (Peru CRC/C/65/Add.8, para. 179)

The paramountcy principle should be clearly stated in law. Any regulation that fetters the principle could lead to a breach of the Convention – for example inflexible rules about the adopters, such as the setting of age limits, or about the child, for example requiring a lengthy period before an abandoned child can be adopted. (For further discussion of "best interests" see article 3, page 35; article 9, page 121; and article 18, page 231.)

"The child" is of course the child being proposed for adoption, but best interests' consideration should not necessarily be limited to that child; other children may be affected by adoption procedures. Philippine law, for example, requires that "the child of the adoptive parents who is 10 years or older shall give his or her consent to the adoption" (Philippines CRC/C/3/Add.23, para. 52). An adoption considered to be contrary to the best interests of the other children within the family would be difficult to square with the principles of the Convention.

Adoption procedures can also give rise to forms of discrimination, for example in Grenada, Hungary and Mexico:

"The Committee is … concerned about the apparent gender bias in favour of girls in the adoption process... The Committee recommends that the State Party undertake a study to assess the situation and determine the impact of intercountry adoptions and to determine why girls are favoured over boys in the adoption process." (Grenada CRC/C/15/Add.121, para. 19)

"… The Committee is… concerned by the high number of Roma children who are maintained in institutions even though some of them might benefit from adoption. "… The Committee urges the State Party to identify those children who could benefit from adoption and initiate the adoption process, taking into consideration the cultural background of these children in accordance with article 20 of the Convention." (Hungary CRC/C/HUN/CO/2, paras. 34 and 35)

"The Committee is concerned about… the fact that adoptions by rich families are reportedly prioritized, without giving due consideration to the child's best interests and her or his cultural origins." (Mexico CRC/C/MEX/CO/3, para. 41)

The Committee sees central monitoring by the State of all forms of adoption as essential for securing the best interests of children.

Adoption authorized "only by competent authorities... in accordance with applicable law"

In all countries where adoption is allowed, the Committee has expected to see legislation regulating both its domestic and international forms. "Competent authorities" covers the judicial and professional authorities charged with vetting the viability of the placement in terms of the best interests of the child, and with ensuring that proper consents have been obtained and all relevant information considered. Thus, both trained social workers and adjudicators should be involved in the process. The Committee raised concerns in this respect with Mauritius:

"The Committee is concerned about the lack of a specific requirement to have a social report to assist judges in their decisions that adoption is in the best interests of the child. The Committee is further concerned about the lack of a follow-up system. "… the Committee recommends that the State Party take legislative measures to ensure that in case of adoption the decision of the judge is supported by relevant information regarding both the child and the adopting parents in order to ensure that adoption is in the best interests of the child." (Mauritius CRC/C/MUS/CO/2, paras. 45 and 46)

The Committee has also stressed the principle that delay is likely to be prejudicial to the best

interests of the children, and that social services involvement should continue after the adoption has occurred. The Committee expressed concern about Switzerland and the Philippines, because:

"... children adopted abroad must wait two years before being formally adopted, which can lead to discrimination and statelessness. In addition, the Committee is concerned that, because of the inadequate follow-up, cases of ill-treatment of children by adoptive parents have been reported." (Switzerland CRC/C/15/Add.182, para. 36)

"... The Committee is concerned that the lengthy process of declaring a child for adoption results in a prolonged stay in an institution..." (Philippines CRC/C/15/Add.259, para. 48)

Determination "on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary"

While the best interests of children are the paramount consideration in an adoption process, there is a presumption within the Convention that children's best interests are served by being with their parents wherever possible (articles 7 and 9) and that their parents have "primary responsibility" for their upbringing, a responsibility they must exercise within the framework of the child's best interests, his or her rights under the Convention and his or her evolving capacity (articles 5 and 18). An adoption can only occur if parents are unwilling or are deemed by judicial process to be unable to discharge this responsibility – any legislation that permits adoptions under less stringent conditions would probably amount to a breach of both children's and parents' rights under the Convention. The requirement for proper consent for adoption has arisen because of cases in which children have been wrongfully removed from their parents.

The Committee expressed concern, for example, at the Hungarian practice of making an adoption placement before the child has been born (Hungary CRC/C/15/Add.87, paras. 17 and 33). When Hungary made its Second Report, the Committee was still concerned

"... over the short period of time after birth during which the mother may withdraw her consent". (Hungary CRC/C/HUN/CO/2, para. 34)

And it raised with Kyrgyzstan,

"... The practice of encouraging parents to sign documents by which they agree to give up their children when placing the latter under institutional care, although not widespread, is a matter of concern to the Committee." (Kyrgyzstan CRC/C/15/Add.244, para. 41)

The "paramountcy" of children's best interests in adoption is in one sense circumscribed by the legal necessities of satisfying legal grounds and gaining necessary consents. If the procedures are not followed then an adoption must not proceed, regardless of the child's best interests. The Convention's provisions mean that each potential adoption will require proper investigation with full reports by independent professionals to the authorities considering the adoption application. Article 21 does not spell out what consents must be obtained. "If required" leaves it up to domestic legislation – although any gross violation of either the child's or a natural parent's rights to family life would amount to a breach of the Convention (see articles 7 and 9) and other human rights instruments. States should reconsider, for example, laws that do not permit fathers of children born outside marriage to have any potential rights in adoption procedures. Where consents are required, the Convention provides that these must be given "on the basis of such counselling as may be necessary".

The child's views

The child's views are not explicitly mentioned in the requirements relating to consent, but proper consideration of them is undoubtedly implied, as well as required under article 12 (see page 155). Children's ascertainable views must be central to any consideration of their "best interests". As discussed in articles 7 and 8, the Committee has made clear that adopted children have the right to be told they are adopted and to know the identity of their biological parents, if they so wish, which implies keeping accurate and accessible records of the adoption (page 115).

In addition to taking the child's views into account, adoption legislation may also require that the child's formal consent be obtained. Some countries report that ages are set above which the child's consent is legally required for adoption (for example Nova Scotia, where consent to an adoption is needed from any child aged 12 or more (Canada CRC/C/11/Add.3, para. 1129), from any child aged 10 or more in Croatia (Croatia CRC/C/8/Add.19, para. 103) and aged 9 or more in Mongolia (Mongolia CRC/C/3/Add.32, paras. 135 to 139)). Another possibility is giving children the power to veto their own adoption. Adoption is never essential (the Islamic experience shows

that permanency can be achieved without it) and is usually irrevocable. Consent to adoption therefore carries more risk, is a weightier decision, than vetoing it. Passively refraining from exercising a right of veto, rather than actively stating consent, is also less likely to place a burden of guilt on children in relation to their natural parents and complies with the principle of article 12 that children should be free to express their views, but should not feel forced to do so. It is hard to imagine in what circumstances a child of any age should be adopted against his or her expressed wishes. Even if a very young infant objected, it would seem wise to accept his or her wishes and return to the subject at a later date.

The Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption provides that such adoptions can only take place if the authorities of the State of origin "have ensured, having regard to the age and degree of maturity of the child, that he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required" and that "consideration has been given to the child's wishes and opinions..." (article 4(d)). It also states that where consent is required, it must be given freely, without inducements.

The Committee has emphasized the importance of the child's rights under article 12 to have his or her wishes considered in relation to adoption:

"In the framework of the adoption process, due consideration should be given to the provisions of article 12 of the Convention." *(Mexico CRC/C/15/Add.13, para. 18)*

"... the Committee recommends that consideration be given to extending and broadening the involvement of children in decisions affecting them in the family and in social life, including in proceedings relating to family reunification and adoption." *(Germany CRC/C/15/Add.43, para. 29)*

"... In particular, the Committee recommends that the State Party ... require that children of a certain age consent to their adoption." *(New Zealand CRC/C/15/Add.216, para. 34)*

"Intercountry adoption may be considered as an alternative means of child's care under certain conditions"

The wording deliberately falls short of saying that countries must consider international adoption as one of the options of care for children without families, and, as discussed below, article 21 requires that it must only be undertaken as a last resort.

The rising number of intercountry adoptions has been the cause of much concern. Children are a highly desirable commodity in countries where low birth rates and relaxed attitudes towards illegitimacy have restricted the supply of babies for adoption. This has led to an apparently increasing number of adoptions being arranged on a commercial basis or by illicit means. Without very stringent regulation and supervision children can be trafficked for adoption or can be adopted without regard for their best interests; some children are even adopted for nefarious purposes, such as child prostitution or forms of slavery. This has been recognized in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (see page 669). This requires States to take measures to criminalize as an extraditable offence any sort of trafficking in children, including: "Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable internal legal instruments on adoption." (Articles 2, 3 and 5)

The Committee has frequently expressed concern about the phenomenon, for example:

"The Committee expresses its grave concern over the information brought to its attention of alleged trafficking in intercountry adoptions in violation of the provisions and principles of the Convention. It is further concerned about the absence of a normative framework in the field of intercountry adoptions, namely in the light of articles 3, 12 and 21 of the Convention." *(Paraguay CRC/C/15/Add.27, para. 11)*

"The Committee notes with concern the information provided by the State Party that an illegal adoption network has been uncovered and that the mechanisms to prevent and combat such violations of children's rights are insufficient and ineffective." *(Guatemala CRC/C/15/Add.58, para. 21)*

Even when intercountry adoptions are regulated, the Committee has remained concerned about countries that have high numbers; it also encourages the receiving countries to monitor the welfare of children who have been adopted abroad.

Argentina entered a reservation to paragraphs (b), (c), (d) and (e) of article 21, but not because it was unconcerned about international adoption. On the contrary it stated that these provisions do not apply within its jurisdiction: "because, in its view, for the purpose of their implementation, a rigorous mechanism for the legal protection of the child in respect of international adoption must already be in place, in order to prevent the trafficking and sale of children" (CRC/C/2/Rev.8, p. 13,

Argentina CRC/C/8/Add.2, para. 62). The Committee was not satisfied with this argument and recommended that Argentina review the reservation with a view to withdrawing it (Argentina CRC/C15/Add.35, paras. 8 and 14; and Argentina CRC/C/15/Add.187, para. 14).

Intercountry adoption only "if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin"

In other words, intercountry adoption must be a solution of last resort. States are under an obligation to take active measures to ensure that all possible efforts have been made to provide suitable care for the child in his or her country of origin. This "last resort" provision is consonant with article 20(3) requiring due regard to be paid to "the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background"; with article 7, upholding the child's rights to know and be cared for by parents, and with article 8, the child's right to preserve identity. It is confirmed in the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, which establishes the "subsidiarity principle" that an intercountry adoption should only take place "after possibilities for placement of the child within the State of origin have been given due consideration". Prolonged institutionalization in most cases is unlikely to constitute "suitable" care in the child's country of origin.

The Committee is concerned when countries seem to have a disproportionate number of intercountry adoptions, for example in Bolivia and Latvia:

"... the Committee is concerned about the limited understanding and acceptance in the State Party that domestic adoptions are more desirable than intercountry adoptions, the lack of mechanisms to prepare prospective adoptive parents, and the lack of mechanisms to follow up and monitor the situation of adopted children..." (Bolivia CRC/C/15/Add.256, para. 41)

"The Committee is concerned that the number of children adopted domestically remains significantly lower than the number adopted through intercountry adoptions..." (Latvia CRC/C/LVA/CO/2, para. 34)

It recommended that Latvia take steps

"... to encourage domestic adoptions, including through the dissemination of accessible information relating to the conditions for adoption, offering preparatory assistance to persons willing to adopt and working groups for adoptive parents. The Committee also recommends ... preference is given to domestic adoption over intercountry adoption." (Latvia CRC/C/LVA/CO/2, para. 35)

Unaccompanied refugee or immigrant children

Large and rising numbers of unaccompanied children are arriving in the rich nations of the world. In its General Comment No. 6 on "Treatment of unaccompanied and separated children outside their country of origin", the Committee recognized that, although it was tempting to see adoption as a good solution for these children, there were, in fact, many potential hazards. It recommends the following:

- *"Adoption of unaccompanied or separated children should only be considered once it has been established that the child is in a position to be adopted. In practice, this means,* inter alia*, that efforts with regard to tracing and family reunification have failed, or that the parents have consented to the adoption. The consent of parents and the consent of other persons, institutions and authorities that are necessary for adoption must be free and informed. This supposes notably that such consent has not been induced by payment or compensation of any kind and has not been withdrawn;*
- *Unaccompanied or separated children must not be adopted in haste at the height of an emergency;*
- *Any adoption must be determined as being in the child's best interests and carried out in keeping with applicable national, international and customary law;*
- *The views of the child, depending upon his/her age and degree of maturity, should be sought and taken into account in all adoption procedures. This requirement implies that he/she has been counselled and duly informed of the consequences of adoption and of his/her consent to adoption, where such consent is required. Such consent must have been given freely and not induced by payment or compensation of any kind;*
- *Priority must be given to adoption by relatives in their country of residence. Where this is not an option, preference will be given to adoption within the community from which the child came or at least within his or her own culture;*
- *Adoption should not be considered*
  - *where there is reasonable hope of successful tracing and family reunification is in the child's best interests;*

- *if it is contrary to the expressed wishes of the child or the parents;*
- *unless a reasonable time has passed during which all feasible steps to trace the parents or other surviving family members have been carried out. This period of time may vary with circumstances, in particular, those relating to the ability to conduct proper tracing; however, the process of tracing must be completed within a reasonable period of time;*

- *Adoption in a country of asylum should not be taken up when there is the possibility of voluntary repatriation under conditions of safety and dignity in the near future."*
  (Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, para. 91)

Duty to "ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption"

Thus every international adoption must be authorized as being in the best interests of the child by competent authorities of the child's State, on the basis of proper investigation and information and with proper consents (with counselling, if necessary) having been obtained. While the Hague Convention lays down these ground rules and provides the details for intercountry adoption, it is, of course, up to each State to ensure that its adoption legislation, professional training and administrative mechanisms are in place.

Intercountry adoption should not result in "improper financial gain"

Country reports and Committee observations highlight the widespread concern about the trafficking of children for adoption. While payments by adoptive couples may be made in good faith and without harm to the child, a system that puts a price on a child's head is likely to encourage criminality, corruption and exploitation. Article 35 of the Convention on the Rights of the Child requires States Parties to take measures to prevent the sale of children for any purpose. Article 32 of the Hague Convention states:

"1. No one shall derive improper financial or other gain from an activity related to an intercountry adoption.

2. Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.

3. The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered."

The Optional Protocol on the sale of children, child prostitution and child pornography (see page 669) obliges States Parties to criminalize any improper financial gain from the adoption of a child as an extraditable offence (articles 2, 3 and 5).

The Committee's concerns in this area are primarily because of the danger of children being trafficked. However, it has also signalled its disapproval of any form of profiteering from intercountry adoption, for example in its concluding observations to Colombia and the Russian Federation:

"... The Committee is particularly concerned that the practice of private 'Adoption Houses' increases the risk of profit-making in conjunction with adoptions and contravenes article 21 of the Convention.
"The Committee recommends that the State Party ensure that all intercountry adoptions be administered through a central authority..."
(Colombia CRC/C/COL/CO/3, paras. 56 and 57)

article 21

States that have ratified the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (as at July 2007)

Albania	Ecuador	Philippines
Australia	El Salvador	Poland
Austria	Finland	Portugal
Belarus	France	Romania
Belgium	Germany	Slovakia
Bolivia	Hungary	Slovenia
Brazil	India	Spain
Bulgaria	Israel	Sri Lanka
Burkina Faso	Italy	Sweden
Canada	Latvia	Switzerland
Chile	Luxembourg	Thailand
China	Madagascar	Turkey
Colombia	Mexico	United Kingdom
Costa Rica	Netherlands	Uruguay
Cyprus	Norway	Venezuela
Czech Republic	Panama	
Denmark	Peru	

"The Committee... notes that the federal authorities do not exercise sufficient control of foreign adoption agencies with respect to documentation required for adoption, undue payments and allowing prospective adoptive parents to select the child they will adopt..." (Russian Federation CRC/C/RUS/CO/3, para. 42)

States should conclude "bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs"

The most important treaty for States to join as parties is now the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (see Appendix 4, page 747). This was drafted to meet the need for detailed, legally binding international standards, for an agreed system of supervision and for channels of communications and effective relationships between the authorities in the countries of the adopted child and the adopters. It builds upon article 21 and the rest of the Convention on the Rights of the Child and reflects the provisions of the 1986 United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally. The Hague Convention's first objective is "to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law" (article 1(a).

The Committee has systematically taken note of the signing of this Convention, taking pains to commend those countries that have become parties (see box) and strongly encouraging those that have not yet done so. It should be noted that most of the States that have become parties have significant numbers of intercountry adoptions. However, it noted with disapproval that in France,

"... the majority of intercountry adoptions are made with countries of origin that have not ratified the Hague Convention of 1993 and is concerned at the high percentage of intercountry adoptions which are not made through the accredited bodies but through individual channels." (France CRC/C/15/Add.240, para. 33)

Rich countries – the "receiving States" of the Hague Convention – should be vigilant about adoptions that seek to get round the provisions of the Convention.

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 21, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 21 is relevant to the **departments of justice, social welfare and foreign affairs**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 21 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 21 likely to include the training of **social workers, judiciary, port and border control authorities, adoption agency staff and development of education for adoptive parents**)?

• Specific issues in implementing article 21

- ☐ Does the State recognize and/or permit a system of adoption of children?

If yes:

Does legislation and administration ensure that in all adoption proceedings (domestic, "customary" and intercountry)

- ☐ the best interests of the child are the paramount consideration?
- ☐ adoptions are authorized only by competent authorities?
- ☐ these authorities make their decisions on the basis of all pertinent and reliable information?

- ☐ Does this information include the ascertainable views of the child?
- ☐ Are the views of the child given due weight, having regard to age and maturity?

How to use the checklist, *see page XIX*

- ☐ Are the views and best interests of other children affected by a proposed adoption (such as the children of the prospective adopters) considered by the competent authorities?
- ☐ In this process is due regard paid to the child's right to know and be cared for by his or her parents?
- ☐ In this process is due regard paid to preservation of the child's identity and the desirability of continuity in the child's background and to the child's ethnic, religious, cultural and linguistic background?

Before agreeing to an adoption, must the authorities be satisfied that

  - ☐ the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians?
  - ☐ all consents required by law have been given by the persons concerned?

- ☐ Where consents are required by law, are the persons concerned provided with counselling?

Do children have a right to consent to an adoption

  - ☐ at any age?
  - ☐ at a particular age?
  - ☐ according to age and maturity?

- ☐ Do all children have a right to veto their adoption?
- ☐ Are all adoption placements centrally monitored and periodically reviewed by the authorities?
- ☐ Are intercountry adoptions only permitted if the child cannot be placed in a foster or an adoptive family or cannot be cared for in any other suitable manner within the jurisdiction?
- ☐ Do all children involved in intercountry adoptions (whether leaving or entering the State) enjoy safeguards and standards equivalent to those regulating domestic adoptions?
- ☐ Do border controls monitor the entry and exit of babies and children travelling with adults who are not their parents?
- ☐ Is improper financial gain from intercountry adoption prohibited by law?
- ☐ Has the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption been ratified or acceded to?
  - ☐ If yes yes, have all its provisions relating to law or administrative procedures been implemented?
- ☐ Has the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography been ratified?
  - ☐ If yes, have all its provisions been implemented?
- ☐ Have any other bilateral or multilateral treaties relating to adoption been concluded?

How to use the checklist, see page XIX

article 21

Reminder: **The Convention is indivisible and its articles interdependent. Article 21 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 21 include:

Article 5: parental guidance and child's evolving capacities
Article 7: child's right to know and be cared for by parents
Article 8: preservation of child's identity
Article 9: non-separation from parents except when necessary in best interests
Article 10: family reunification
Article 11: protection from illicit transfer and non-return
Article 16: protection from arbitrary interference with privacy, family and home
Article 18: parents having joint responsibility
Article 20: children deprived of their family environment
Article 25: periodic review of placement
Article 35: prevention of sale, trafficking and abduction
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

UNICEF/3200/Bregnard

Refugee children

Text of Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations cooperating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Summary

Article 22 addresses the rights of refugee and asylum-seeking children to appropriate protection and humanitarian assistance, including tracing family members. This is the only explicit reference to refugees in the general human rights treaties and is particularly important for children in States that have not ratified the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

The Office of the United Nations High Commissioner for Refugees (UNHCR) estimates that about half of the world's 10 million refugees are children. Almost every Concluding Observation by the Committee on the Rights of the Child has a section on the country's treatment of refugee children.

The article stresses that these children are entitled to the rights of the Convention (as are all children within the State's jurisdiction, regardless of their nationality status). In particular article 22 must be read in conjunction with articles 7 and 8 (right to nationality and family relations) and article 9 (separation from parents only when

necessary in the best interests of the child), article 10 (rights to family reunification, to be dealt with in a positive, humane and expeditious manner), article 20 (children without families), article 35 (trafficking of children), article 37 (deprivation of liberty a measure of last resort) and article 39 (recovery and rehabilitation after experience of armed conflict, torture and other forms of abuse). The two Optional Protocols, on armed conflict and on the sale of children, are also relevant, particularly as regards treatment of children outside their country of origin. In addition there are a number of international treaties relating to these children that the Committee consistently urges States to adopt, as well as guidelines by UNHCR (see box below). The Committee has also issued a General Comment on "Treatment of unaccompanied and separated children outside their country of origin" (CRC/GC/2005/6). ■

Background

Earlier drafts of article 22 emphasized that the refugee child "needs special protection and assistance". This word "special" was changed to "appropriate", partly because the drafters recognized that the needs of these children would be met if the articles of the Convention on the Rights of the Child were properly applied to them, and partly in response to pressure from States that were cautious about according children special rights of residence or nationality, or which did not want to bear the cost of tracing family members (E/1982/12/Add.1, C, pp. 64 to 68; Detrick, pp. 320 to 329). It is important, nonetheless, that States recognize that refugee and asylum-seeking children need specific forms of protection and assistance.

There have been a number of UNHCR Executive Committee Conclusions to this effect, for example, Executive Committee Conclusions No.47 (1987) on Refugee Children; No.59 (1989) on Refugee Children; No.84 (1997) on Refugee Children and Adolescents; No.88 (1999) on Protection of the Refugee's Family; and No.105 (2006) on Women and Girls at Risk. These have now been augmented by General Comment No. 6 of the Committee on the Rights of the Child, on "Treatment of unaccompanied and separated children outside their country of origin" (CRC/GC/2005/6, see box for summary, page 309).

Related international treaties and guidelines

The Committee encourages States to ratify other international instruments that address issues relating to unaccompanied and separated children, including:

- the two Optional Protocols to the Convention on the Rights of the Child (on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography),
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
- the Convention on the Elimination of All Forms of Discrimination against Women,
- the Convention relating to the Status of Refugees ("the 1951 Refugee Convention") and the Protocol relating to the Status of Refugees,
- the Convention on the Reduction of Statelessness,
- the Convention relating to the Status of Stateless Persons,
- the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption,
- the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children,
- the four Geneva Conventions of 12 August 1949, the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1997.

The Committee also encourages States Parties to the Convention and others concerned to take into account UNHCR's *Guidelines on Protection and Care* (1994) and the *Inter-Agency Guiding Principles on Unaccompanied and Separated Children* (ICRC, 2004).

(Committee on the Rights of the Child, General Comment No. 6, "Treatment of unaccompanied and separated children outside their country of origin", 2005, CRC/GC/2005/6, para. 15)

The Convention relating to the Status of Refugees and its 1967 Protocol are the key global instrument on this issue. Over fifty countries have not yet ratified this Convention, and the Committee on the Rights of the Child has consistently recommended that they become parties, as well as encouraging States to lift any reservations entered in respect of refugees.

... a child who is seeking refugee status or who is considered a refugee "in accordance with applicable international or domestic law and procedures"

Article 22 does not define what is meant by "refugee" but refers to applicable international or domestic law and procedures. The 1951 Convention relating to the Status of Refugees (as amended by the 1967 Protocol relating to the Status of Refugees) provides the international definition of refugees. The defining conditions for adults and children under this Convention are, broadly speaking, that refugees must be outside their country of nationality (or without nationality) because of a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion, and they must be unable or unwilling to return because of this fear. A child or adult who holds this refugee status cannot be forced to return to his or her country of origin where he or she may face persecution, or be passed on to another country that might force such a return (known as "non-refoulement" obligations). The *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status* is widely recognized as an authoritative interpretation of the 1951 Convention.

It is for States to enact and implement their national asylum legislation (though UNHCR may conduct refugee status determination under its mandate where governmental procedures are not in place or are insufficient). This legislation must conform to any international obligations to which the State is Party, including the Convention on the Rights of the Child, but it does not have to be limited by these obligations. This important principle is considered customary international law, and thus binding on countries that are not parties to the 1951 Convention or the 1967 Protocol.

Accompanied children usually, but do not have to, assume their parents' refugee status. Problems may arise, however, when unaccompanied or separated children have to prove refugee status – the difficulty of establishing this status may be compounded by their lack of maturity and the fact that the claim for refugee status may have arisen from circumstances relating to their families or relatives rather than directly to the children themselves.

In its General Comment No. 6 on "Treatment of unaccompanied and separated children outside their country of origin" the Committee clarifies that States' non-refoulement obligations derive directly from the Convention:

"Furthermore, in fulfilling obligations under the Convention, States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 and 37 of the Convention, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed. Such non-refoulement obligations apply irrespective of whether serious violations of those rights guaranteed under the Convention originate from non-state actors or whether such violations are directly intended or are the indirect consequence of action or inaction. The assessment of the risk of such serious violations should be conducted in an age and gender-sensitive manner and should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services.

"... In particular, the refugee definition in that Convention must be interpreted in an age and gender-sensitive manner, taking into account the particular motives for, and forms and manifestations of, persecution experienced by children. Persecution of kin; under-age recruitment; trafficking of children for prostitution; and sexual exploitation or subjection to female genital mutilation, are some of the child-specific forms and manifestations of persecution which may justify the granting of refugee status if such acts are related to one of the 1951 Refugee Convention grounds. States should, therefore, give utmost attention to such child-specific forms and manifestations of persecution as well as gender-based violence in national refugee status determination procedures."
(Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, paras. 27 and 74)

For example, the Committee was critical of Germany because it did not accept recruitment of children as soldiers as a "child-specific" form of persecution in the asylum procedure (Germany CRC/C/15/Add.226, para. 54).

Where there are inadequate systems for establishing refugee status the situation of children can become dire, as the Committee pointed out to China:

"The Committee is... concerned that children entering mainland China from the Democratic People's Republic of Korea are categorically considered as economic migrants and returned to the Democratic People's Republic of Korea

without consideration of whether there are risks of irreparable harm to the child upon return." (China CRC/C/CHN/C/2, para. 80)

Even when children's welfare is not directly jeopardized, poor systems can lead to delay, which is inevitably damaging to children's welfare:

"... the Committee remains concerned at:
(a) The large number of asylum applicants whose initial requests are rejected leading, inter alia, *to delays and detention at the State Party's borders that may affect respect for the rights of the children involved;*
(b) The frequent occurrence of delays throughout the administrative and/or judicial processes with regard to asylum or refugee applications, including delays in family reunification, which affect children;
(c) The absence of adequate public funding of legal aid for asylum seekers and refugees;
(d) The insufficient attention provided for the specific needs and situation of unaccompanied child refugees..." (Greece CRC/C/15/Add.170, para. 68)

"The Committee is concerned about... the very long processing period for asylum application, which may have negative consequences for the mental health of the child." (Sweden CRC/C/15/Add.248, para. 39)

On the other hand, procedures should not be speeded up so that the child's application for asylum is not given a fair hearing:

"... The Committee is concerned that in the Netherlands the definition of an unaccompanied minor seeking asylum does not conform to international standards... It is also concerned that the determination and rejection of a significant and increasing proportion of applications for refugee status through the 48-hour accelerated procedure are not in keeping with article 22 of the Convention and international standards..." (Netherlands CRC/C/15/Add.227, para. 53)

... a child who is seeking refugee status... whether "unaccompanied or accompanied"

The Committee's General Comment No. 6 on "Treatment of unaccompanied and separated children outside their country of origin" details the essential safeguards for children who travel alone or with adults who are not their parents or caregivers (see summary in box, page 309). The General Comment stresses that the interviews and hearings should be conducted in child-friendly environments and that there should be access to appeal. A guardian or adviser should be appointed to ensure that all decisions taken are in the child's best interests, and lawyers and interpreters as well, where necessary. The Committee usually checks that these safeguards are in place in the receiving countries:

"The Committee is... concerned about reports that unaccompanied children are not provided with adequate support during the asylum procedure and that the appointment of a legal guardian to such children takes too long." (Slovenia CRC/C/15/Add.230, para.56)

"The Committee notes the efforts of the State Party to address the situation of unaccompanied minors by providing them assistance during their time in the holding area by an 'ad hoc administrator' who replaces a legal representative. However, the Committee also notes that the number of minors in such situations has been steadily increasing, and that the implementation of the new legislation remains a challenge... The Committee is also concerned that unaccompanied children arriving at the airport may be returned to the country of origin without judicial intervention and without an evaluation of their family situation... In addition to this, the age determination process allows for errors which may lead to minors not being accorded protection they are entitled to." (France CRC/C/15/Add.240, para. 50)

"... the Committee is... concerned that unaccompanied minors do not have access to the national refugee status determination procedure because they lack a guardian." (Russian Federation CRC/C/RUS/CO/3, para. 66)

There are also many countries in Africa, Asia and South America that act as host to large numbers of refugees from adjoining countries. The Committee recognizes that the appointment of a guardian, or even assessment of refugee status, may not be possible for each child in the face of the emergency and the receiving State's available resources. In Concluding Observations the Committee expressly thanks these countries for their generosity and tends to focus its comments on improving basic conditions in the camps. In its General Comment it recommends:

"In cases of large-scale refugee movements where individual refugee status determination is not possible, States may grant refugee status to all members of a group. In such circumstances, all unaccompanied or separated children are entitled to be granted the same status as other members of the particular group." (Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, para. 73)

Treatment of unaccompanied and separated children outside their country of origin

Committee on the Rights of the Child, General Comment No. 6, 2005: summary

"Unaccompanied" refers to children who are not being cared for by a responsible adult; "separated" to children who are with family members that are not their primary caregiver(s). Such children primarily include refugees, trafficked children and children in search of economic opportunities; they are often exposed to exploitation, abuse, persecution and discrimination.

General obligations of the Convention

Convention rights apply to all children within the State's territory, irrespective of their nationality or immigration status. These rights should be enforced in domestic legislation. States are also encouraged to ratify other, related, international treaties (see box, page 306).

Article 2: The State must take active steps to combat discrimination. Any public order or policing measure must be taken on an individual, not collective, basis.

Article 3: Determination of best interests requires a comprehensive assessment of the children's identity, upbringing, cultural background, particular vulnerabilities and needs, which should be carried out in a friendly atmosphere by trained professionals. The appointment of a guardian, and where necessary a legal representative, is an essential safeguard, as is periodic review of any placement.

Article 6: States must be vigilant against criminal activities linked to these children, by for example giving trafficked children priority status and the prompt provision of guardians. The State must not only respect the international law principle of "non-refoulement" – that people must not be returned to territories where their life or freedom is threatened or they are at risk of persecution – but also that a child may not be sent to a country where they are at risk of irreparable harm of any sort.

Article 12: Children should be provided with all relevant, age-appropriate information concerning their entitlements, the asylum process, the situation in their country of origin etc. The children's views should be taken into account about all decisions affecting them. Interpreters should be available at all stages.

Article 16: Children's right to confidentiality must be respected; particular care should be taken not to endanger the child's family members in the country of origin.

Specific measures

Priority should be given to identifying these children at ports of entry. Assessment of age must respect their human dignity: where age is uncertain, they should be given the benefit of the doubt. Interviews should be conducted by professionals, be age- and gender-sensitive, in a language the child understands. Information sought should include: the identity and citizenship of the child and of both parents and siblings; the reason for being separated/unaccompanied; assessment of any vulnerabilities and needs, and any evidence of persecution, conflict or violence in the country of origin.

The children should be provided with personal identity documentation and a qualified guardian should be appointed to safeguard the child's interests until their majority; adult family members accompanying separated children should be their guardians unless contrary to best interests.

Care and accommodation arrangements should be with relatives where possible; alternative placements must take into account children's ethnic, religious, cultural and linguistic background; siblings should be kept together; changes of residence should only occur where this is in their best interests and the placement should be monitored by qualified people.

All children should have access to full educational opportunities, including being registered with the school authorities as soon as possible, and provided with appropriate educational certificates where return or resettlement is likely. They should have an adequate standard of living and have the same access to health care as children who are nationals. In particular, rehabilitation services should be provided for children who have been the victim of any sort of abuse or trauma.

Measures to protect children from trafficking include regular checks on their whereabouts; enforcing legislation against perpetrators but not criminalizing the child; giving victims access to asylum procedures. States should also protect children from recruitment into armed forces (or re-recruitment); former child soldiers should be rehabilitated and not interned (unless a serious security threat).

As a general rule children should not be deprived of liberty. Detention cannot be justified solely on the basis of children's migratory status or because they are unaccompanied or separated. Where exceptional circumstances lead to detention, this should be for the shortest appropriate time and children should have contact with relatives and representatives and be provided with all basic necessities including access to education, preferably outside the place of detention.

Rights in asylum procedures

States must enact and enforce legislation to enable children of all ages to claim asylum, even if they are unable themselves to articulate a well-founded fear of persecution. They should be represented by their guardians and, free of charge, a legal representative and an interpreter; decisions on asylum must take into account the unique combination of factors relating to each child. Persecution of relatives; risk of under-age recruitment, trafficking, sexual exploitation, female genital mutilation are examples justifying the granting of refugee status.

Children should not be referred automatically to asylum procedures and those who are not entitled to asylum should enjoy the same rights as other children while they remain within the State.

Family reunification

The State must make all efforts, as quickly as possible, to trace the family of unaccompanied or separated children and reunite them, unless this is contrary to children's interests, or would jeopardize the family. Child refugees may not be returned to their country of origin; where there are smaller risks it may also be necessary to balance them against the children's right to be with their family. Applications by family members to join the child should be dealt with in a positive, humane and expeditious manner.

Return to country of origin

This is not an option if there is a reasonable risk that children's rights will be violated. Determination of risk must include investigation, through social work networks, of the security and socio-economic conditions, the precise care arrangements for the children, their views and level of integration in the host country and their right to preserve identity and continuity of upbringing.

Local integration

If return is not possible, local integration is the primary option. It must be based on secure legal status, including residence status. Appropriate long term arrangements must then be made. Resettlement in a third country may be the best interests-solution for some children.

Intercountry adoption

This may only occur if all efforts regarding tracing and family reunification have failed, if it is not contrary to the expressed wishes of the child or parents and is compliant with all international and national law. Adoptions should not occur in the country of asylum if there is a possibility of safe voluntary repatriation in the near future.

Training and record-keeping

The training of officials working with these children must include the Convention, knowledge of the country of origin, appropriate interview techniques, cultural sensitivity and child development.

A detailed and integrated system of data on these children should be kept, including basic biographical data on each child with details of their legal status, placement, education, appointment of representatives and attempts at family reunification; overall numbers of children entering, or refused entry, granted asylum or returned to country of origin, numbers of guardians and lawyers appointed. Care must be taken to protect confidentiality, including that of family members still in the country of origin.

(Committee on the Rights of the Child, General Comment No. 6, "Treatment of unaccompanied and separated children outside their country of origin", 2005, CRC/GC/2005/6. For full text see www.ohchr.org/english/bodies/crc/comments.htm.)

Internal displacement and migration not covered by article 22

Children and their families may be fleeing persecution or armed conflict within their own country and thus, technically, fall outside the scope of the definition of a refugee, though their experiences are often the same. Indeed, families may oscillate between being refugees and internally displaced persons as they cross and recross their State's frontier.

The Representative of the Secretary-General for Internally Displaced Persons issued *Guiding Principles on Internal Displacement* (1998) which addresses the situation of internally displaced persons, asserting their right to be protected from arbitrary displacement – for example from ethnic cleansing, or from clearances arising from large-scale development projects not justified by compelling or overriding public interests. The Principles recognize the particular needs of children, including those separated from their families or previous legal or customary primary caregiver, and require that their rights to basic services, education and civil liberties are secured.

The Committee has expressed concern about the plight of internally displaced children, referring States to UNHCR.

For example:

"... The Committee is disturbed ... by the massive numbers of people who have been forcibly regrouped within the country and by the very poor, sometimes life-threatening conditions in displaced and regrouped persons camps, and the poor health and education services available to camp populations...
"The Committee urges the State Party to make every effort to protect the civilian population from displacement and to implement its plans to end regroupment, giving particular attention to the situation of unaccompanied children and the need for effective family tracing. The Committee further urges the State Party to ensure that all displaced children and their families, including those who have been regrouped, have access to essential health and education services and to consider the need for continued access to such services during the often slow process of return to communities of origin. The Committee also urges the State Party to provide returning children and their families with assistance in re-establishing themselves in their homes. In addition, the Committee urges the State Party to continue to work closely with UNHCR towards establishing conditions conducive to the return of refugees in safety and in the context of a durable solution." (Burundi CRC/C/15/Add.133, paras. 67 and 68)

"The Committee takes note of the State Party's intention to increase resources for assistance to internally displaced children, however it expresses grave concern of the very high number of children who continue to be displaced annually in Colombia. According to UNHCR Colombia has the largest internally displaced population in the world... it is estimated that children constitute more than half of the displaced population. In addition, the Committee is concerned that inadequate attention is paid to the physical protection of internally displaced children and their need for psychosocial assistance in order to overcome the trauma of displacement.
"The Committee recommends that the State Party... substantially increase the resources allocated for internally displaced persons and implement targeted programmes for children in order to provide them with adequate access to food, shelter, education and health services;... pay additional attention to the psychosocial assistance required by children who have been displaced and provide further protection for girls against gender-based violence;... distribute humanitarian assistance by civilian authorities..." (Colombia CRC/C/COL/CO/3, paras. 78 and 79)

Article 22 does not cover migrant children who are not refugees, though many of the world's unaccompanied children outside their country are the so-called economic migrants fleeing poverty and lack of opportunity rather than persecution (covered by the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families). Children in foreign countries may also have been trafficked there for exploitation as prostitutes or domestic workers. The Committee recommends in its General Comment No. 6 that such children should not automatically be routed through asylum channels to the inevitable end of deportation, but should be treated humanely and positively. It also raises concerns about these children with individual countries, such as Thailand:

"While acknowledging the State Party's efforts to register children of migrant families, it is still deeply concerned about their vulnerability in Thailand. The alleged human rights violations of migrant workers and their family members, such as arbitrary arrests and detention by local police, give cause for serious concern. The Committee regrets that many families, even pregnant women with small children, are deported despite their fear of persecution. In addition, the Committee notes with particular concern that children of migrant workers lack access to a range of health and education services, including those related to HIV/AIDS prevention and care, that their living conditions are often extremely

poor and that many of them work long hours in hazardous conditions.
"The Committee recommends that the State Party take urgent measures to ensure that the children of migrant workers or their family members, in particular non-registered migrants, are not arbitrarily arrested, detained or persecuted and that if they are to be returned to their country of origin, the principle of non-refoulement should be respected. It recommends that the children of migrant workers are ensured access to health and social services and to education in accordance with the principle of non-discrimination…" *(Thailand CRC/C/THA/CO/2, paras. 68 and 69)*

Responsibilities of countries of origin or transit countries, and bilateral cooperation

The State from which these children have fled may be unwilling or unable to remedy the reason for their flight, such as armed conflict, ethnic cleansing or political persecution. This has not, however, stopped the Committee from urging them to take remedial measures. Whenever countries have large-scale child exoduses, for whatever reason, the Committee expects the State to take active measures to remedy the causes and secure the children's welfare:

"The Committee notes that the departure of children from Albania to neighbouring countries is a significant problem, and that approximately 4,000 children have left the country unaccompanied by their parents.
"The Committee recommends that the State Party strengthen its efforts in this area, in particular:
(a) To determine and address the causes of such large-scale departure of unaccompanied children and introduce safeguards to reduce the phenomenon, in particular if such children are victims of illegal networks;
(b) To ensure a coordinated approach to the collection of information and statistics, allowing a response commensurate to the needs;
(c) To strengthen cooperation and accelerate conclusion of agreements with neighbouring countries in order to ensure respect for the rights of these children, as well as their protection and education." *(Albania CRC/C/15/Add.249, paras. 66 and 67)*

The Committee is also encountering situations where the receiving countries have sent back significant numbers of children to their country of origin or to a transit country. For example, Mexico and Morocco receive many children who have been sent back from the United States of America or Spain. The Committee has made clear that such countries have duties under the Convention to these returned children:

"… the Committee remains concerned at the large number of unaccompanied children who are returned to their country of origin from Mexico, and at the absence of measures to protect unaccompanied migrant and refugee children. It is further concerned at the large number of unaccompanied children who are returned to Mexico and at the lack of capacity of the State Party to protect and reintegrate all of them.
"The Committee recommends that the State Party…
(a) ensure that an appropriate legal and operational framework for the guardianship of foreign unaccompanied children is developed;…
(c) enhance the capacity of [specified local organizations] to protect unaccompanied migrant children, including by organizing trainings and awareness raising programmes on the specific rights and vulnerability of unaccompanied minors;…
(e) ensure that all unaccompanied children who are returned to the State Party receive appropriate protection and care, in particular that social reinsertion measures are available to them;
(f) engage in further bilateral or multilateral discussions with neighbouring States to provide for appropriate treatment of unaccompanied children throughout the region;
(g) seek technical assistance in this respect from, among others, UNHCR." *(Mexico CRC/C/MEX/CO/3, paras. 60 and 61)*

As the United States of America is not yet a State Party to the Convention, the Committee has not been able to raise concerns with it in parallel to Mexico. However the Committee made energetic attempts to improve links between Spain and Morocco, expressing concern to both:

"The Committee is deeply alarmed about the conditions of unaccompanied foreign children, mostly Moroccans, especially in the autonomous cities of Ceuta and Melilla. In particular, it expresses its concern at reports of… ill-treatment of children by police during forced expulsion to the country of origin where, in some cases, they were deported without access to legal assistance and interpretation … [and] … summary expulsions of children without ensuring that they are effectively returned to family or social welfare agencies in their country of origin.
"The Committee recommends that the State Party urgently take the necessary measures in order to… coordinate with the Government of Morocco to ensure that, when children are repatriated from Spain to Morocco, they are returned to family members willing to care for them or to an appropriate social service agency; take all measures to prevent irregular procedures in the expulsion of unaccompanied

foreign children…" (Spain CRC/C/15/Add.185, paras. 45 and 46)

and

"The Committee is deeply concerned at the situation of Moroccan children who are deported, notably in the cities of Ceuta and Melilla in Spain. In particular, the Committee is concerned at allegations of police brutality against such children. The Committee is further concerned that these children, once they are back on the territory of the State Party, do not receive adequate protection or assistance and that their situation is not monitored.
"Taking into consideration its recommendations to Spain … the Committee recommends that the State Party take all necessary measures… to prevent unaccompanied children from migrating to other countries, including by offering them opportunities for education;… to coordinate with the Government of Spain to ensure that when children are repatriated from Spain to Morocco, they are returned to family members willing to care for them or to an appropriate social service agency for their care and rehabilitation; … to investigate in an effective way reported cases of ill-treatment of returned children." (Morocco CRC/C/15/Add.211, paras. 58 and 59)

The following year Morocco made a special effort to inform the Committee in an official "Reply" that, following these Concluding Observations, it had signed a detailed memorandum of understanding with Spain on their shared responsibility for improved treatment of child migrants, taking into account the Committee's recommendations (CRC/C15/Add.211).

The Committee is even more deeply concerned where returned child refugees do not just have their rights under the Convention neglected, but are actively penalized, as in the Democratic People's Republic of Korea:

"The Committee is concerned that, according to the State Party information, there are some children from the Democratic People's Republic of Korea that cross the borders and apparently live on the streets of some Chinese cities close to the border which they cross. The Committee is deeply concerned at the information that children and their families who return or are deported back to the State Party are considered not as victims, but as perpetrators of a crime.
"The Committee recommends that the State Party:
(a) Assess and analyse the causes of children crossing the borders to other countries;
(b) Treat the children who return to the State Party as victims and not as perpetrators of a crime;
(c) Negotiate their safe repatriation with the Chinese authorities; and
(d) Provide them with the necessary support for reintegration and counselling." (Democratic People's Republic of Korea CRC/C/15/Add.239, paras. 58 and 59)

Refugee child's rights to "receive appropriate protection and humanitarian assistance" in relation to this Convention and any other international human rights or humanitarian instruments

Refugee children are among the most vulnerable groups in the world – UNHCR points out that they are, for example, disproportionately likely to be victims of sexual abuse or military recruitment. The Committee has taken up these issues with reporting States. Whatever the pressure on the receiving State its legal and moral obligations to protect these children are unarguable. The 2005 updated *Summary Note – UNHCR's Strategy and Activities concerning Refugee Children* outlines the specific needs of refugee children, including adolescents, and prioritizes the following key areas for action: separation from families and care-givers, sexual exploitation, military recruitment and education.

The reference to other human rights and humanitarian treaties includes the provisions of article 23 of the 1951 Convention: "Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals." Article 22 upholds the same principle in relation to both children with refugee status and children seeking it, but in any event the Convention's provisions cover all children within the country's jurisdiction (article 2), so even those children who have been refused refugee status are still protected for as long as they remain in the country.

There should be no discrimination based on age or ethnicity (for example, the Committee expressed concern that Germany did not give benefits to 16- and 17-year-old child refugees and Roma children were being forcibly expelled (Germany CRC/C/15/Add.226, para. 54)). Nor should discrimination occur because States have devolved power and responsibilities to local administrations. While some variations in services to children are an inevitable product of decentralization, States should not permit local governments to violate children's human rights under the Convention.

Appropriate education, health and welfare services

Refugee children must obviously be provided with the basic essentials for survival, and the Committee has expressed concern at any evidence that this is not the case. Where the receiving country is not wealthy, conditions can be particularly severe. For example:

"The Committee notes that communal clashes linked to political, religious and ethnic differences have led to a large population of internally displaced persons in the State Party, and that Nigeria is a host to a large group of refugees from neighbouring countries such as Chad, Sierra Leone and Liberia. The Committee is concerned about the situation of refugee and internally displaced children living in refugee camps, and regrets the paucity of information with regard to these children in the State Party report and the State Party's position that the issue of asylum-seeking children does not arise in Nigeria. The Committee is particularly concerned about reports of sexual exploitation of refugee girls and women within and outside of the camps, including female teenagers who are forced into prostitution. The Committee is also concerned that incidence of teenage pregnancy is high in the camps." (Nigeria CRC/C/15/Add.257, para. 63)

"The Committee notes with appreciation that Azerbaijan provides protection to refugees, including refugee children of Chechen ethnicity from the Russian Federation. Nonetheless, the Committee remains concerned that 35 per cent of about 600,000 internally displaced persons and 200,000 refugees are children and that they live in very poor conditions, lacking basic sanitary and hygienic services, potable water and educational facilities among other things." (Azerbaijan CRC/C/AZE/CO/2, para. 59)

"... the Committee continues to be deeply concerned about the harsh social and economic living conditions of Palestinian refugee children in refugee camps, their limited access to public services, including social and health services and education, and their exposure to violence at home, in schools and in the wider community." (Lebanon CRC/C/LBN/CO/ 3, para. 73)

Even where conditions are not so extreme, the Committee has found that asylum-seeking children are not receiving appropriate assistance, for example in Kazakhstan:

"The Committee ... is concerned that... problems exist in accessing education for children who have not been granted refugee status and do not have other documents that are required; ... the treatment, including nutritional and medical care, provided for illegal migrants, including children, arriving in western Kazakhstan seeking work is inadequate, ... unaccompanied minors are not accorded the same treatment as other children deprived of their family environment." (Kazakhstan CRC/C/15/Add.213, para. 63)

Ideally, refugees, including adolescents, should not be dependent on government or charitable aid but should have opportunities to work (subject to the protections of article 32). The Committee, for example, signified its concern to Jordan about its employment policies which hindered the capacity of refugees to support themselves (Jordan CRC/15/Add.125, para. 56).

The social inclusion of refugee children should be an integral part of these services. This implies inclusion of these children in mainstream schools, and, where necessary, therapy for their inevitably traumatic experiences. Thus the Committee recommended that Norway:

"... strengthen measures to ensure that adequate support and supervision are provided to children living in reception centres, as well as adequate psychological and psychiatric care for traumatized asylum-seeking children. The Committee recommends that the State Party improve the situation in reception centres for unaccompanied children seeking asylum, in terms of resources and adequately trained and competent staff, so that the assistance and care for these children reaches the same level as that provided in other institutions under the child welfare system." (Norway CRC/C/15/Add.263, para. 42)

In addition the Committee is concerned about the number of unaccompanied children who go missing from asylum seekers' reception centres in developed countries. While this sometimes may be initiated by children themselves seeking to avoid deportation, it leaves all such children exposed to abuse and exploitation.

The Committee recommended to Denmark that it

"... conduct a study on unaccompanied children who disappear from reception centres, and the outcome of the study should guide the State Party in respecting the rights of these children." (Denmark CRC/C/DNK/CO/3, para. 52)

Detention of children

Faced by increasing numbers of asylum seekers and migrants, some States have taken to using detention as a means of control. Under the Convention the detention of refugee children should only be used as "a measure of last resort and for the shortest appropriate period of time"

(article 37(b)). The General Comment states that children should not be detained as a matter of routine and that their migratory or unaccompanied status must not be the sole reason for their detention (CRC/GC/2005/6, paras. 61 to 63).

Any decision to detain them should be subject both to the provisions of the Convention on the Rights of the Child and to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules"); similarly, the conditions of their detention should conform to those of the Convention (article 37, page 547 and article 39, page 589) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

The Committee raised this issue with Australia:

"The Committee … remains concerned that children who are unlawfully in Australian territory are still automatically placed in administrative detention – of whatever form – until their situation is assessed. In particular, the Committee is seriously concerned that… administrative detention is not always used as a measure of last resort and does not last for the shortest appropriate period of time; … conditions of immigration detention have been very poor, with harmful consequences on children's mental and physical health and overall development; … there is no regular system of independent monitoring of detention conditions.

"The Committee recommends that the State Party … bring its immigration and asylum laws fully into conformity with the Convention and other relevant international standards, taking into account the Committee's General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin. In particular, the State Party should:

(a) Ensure that children are not automatically detained in the context of immigration and that detention is only used as a measure of last resort and for the shortest appropriate period of time;

(b) Seek an assessment by a court or an independent tribunal within 48 hours of the detention of a child in the context of immigration of whether there is a real need to detain that child;

(c) Improve considerably the conditions of children in immigration detention when such detention is considered necessary and in the best interests of the child, and bring them into line with international standards;

(d) Guarantee periodic review of the detention of children detained in the context of immigration…" (Australia CRC/C/15/Add.268, paras. 62 and 64)

And it recommended that Canada:

"Refrain, as a matter of policy, from detaining unaccompanied minors and clarify the legislative intent of such detention as a measure of 'last resort', ensuring the right to speedily challenge the legality of the detention in compliance with article 37 of the Convention…" (Canada CRC/C/15/Add.215, para. 47)

"States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental or non-governmental organizations cooperating with the United Nations…"

During the drafting of article 22, some delegates to the Working Group were unhappy with the idea that their countries might be obliged to cooperate with non-governmental or intergovernmental organizations, so the words "as they consider appropriate" were added to clarify the discretionary nature of that cooperation. The requirement that intergovernmental organizations and NGOs had to be "working in cooperation with the United Nations" was made because, as some representatives pointed out, terrorist organizations were technically NGOs – although others were concerned because some valid NGOs did not work with the United Nations (E/CN.4/1989/48, pp. 63 to 66; Detrick, p. 325).

The unique and important work of the Office of the United Nations High Commissioner for Refugees (UNHCR) was stressed at all stages of drafting the Convention. The role of UNHCR, established by the General Assembly in 1950, is to provide international protection to refugees under the auspices of the United Nations and, together with governments, to seek durable solutions to their plight and provide them with material assistance.

The value of UNHCR's work in relation to child refugees is frequently emphasized by the Committee to States Parties. In its General Comment No. 6 on "Treatment of unaccompanied and separated children outside their country of origin", the Committee recommends that States seek also assistance from UNHCR, UNAIDS, UNESCO, UNICEF and WHO (CRC/GC/2005/6). The Committee has also suggested that States approach the International Organization for Migration (an intergovernmental organization).

"... to trace parents or other members of the family of any refugee child in order to obtain information necessary for reunification"

Preserving and restoring the child's family unity is of the highest priority in the search for long term solutions for a refugee child, as is stressed in the Committee's General Comment No. 6 on "Treatment of unaccompanied and separated children outside their country of origin", which says that

"... all efforts should be made to return an unaccompanied or separated child to his or her parents except where further separation is necessary for the best interests of the child, taking account of the right of the child to express his or her views." *(CRC/GC/2005/6, para. 81)*

Where reunification is not possible in the country of origin, family reunification in the country where the child is seeking asylum or by resettlement in a third country are the only options. The principles of article 10 should apply to family reunification of refugee children; in particular that applications are dealt with in "a positive, humane and expeditious manner" (see page 136).

The success of tracing largely depends on the energy and commitment of the State receiving the child. The first task must be to set up comprehensive registration and tracing systems, often coordinated by the International Committee of the Red Cross:

"... The Committee recommends that the State Party develop a legislative and administrative framework to guarantee and facilitate family reunification..." *(South Africa CRC/C/15/Add.122, para. 35)*

Many refugee children carry no documentation which is often needed for speedy processing and family reunification:

"... The Committee recommends that the State Party undertake effective public education campaigns to inform asylum seekers, especially those newly arrived, about asylum procedures and the importance of children having documentation; provide practical assistance in obtaining birth certificates for every child and adequate procedures for the replacement of lost identity and travel documentation; and establish a system allowing refugee and asylum-seeking children to have their own documentation..." *(Kyrgyzstan CRC/C/15/Add.127, para. 54)*

When examining Kyrgyzstan's Second Report, the Committee

"... remains concerned that certain practices do not allow persons below 18 to have their own documentation." *(Kyrgyzstan CRC/C/15/Add.244, para. 57)*

It should, however, be noted that family reunification should not be used as a justification for acting against the child's best interests. Children may not wish to be reunited with their family or the family may reject them. As article 9 recognizes, separation from families may exceptionally be necessary in the child's best interests. The Human Rights Committee states in a General Comment: "In the view of the Committee, States Parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. States Parties should indicate in their reports what measures they have adopted to that end." (Human Rights Committee, General Comment No. 20, 1992, HRI/GEN/1/Rev.8, para. 9, p. 191)

Even action to trace family members may inadvertently endanger children or their families by inappropriately breaching confidentiality. Social work support may be needed when family reunion is achieved: family members may not have seen each other for long periods and may have experienced very traumatizing events in the interim.

"In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason"

This provision underlines the principle that refugee and asylum-seeking children are entitled to the same treatment as other children who are deprived of their family environment. Article 20 provides that such children are "entitled to special protection and assistance" and should be provided with alternative care, preferably family-based, if no family members are able to look after them (see page 282). Unaccompanied and separated refugee children are, by definition, "temporarily deprived of their family environment" and States should ensure that appropriate arrangements are in place to ensure that their needs are met.

The needs of refugee children are extensive, including ensuring that they are in safe and

habitable environments and accommodated wherever possible with family and community, that their cultural and linguistic backgrounds are respected, that they have access to education and that their emotional needs are recognized, including responding to any abuse that they may have suffered. The general principles of article 2 (non-discrimination) and article 12 (respect for the views of the child) should always be taken into account. The UNHCR *Refugee Children: Guidelines on Protection and Care* provides much practical advice on these matters.

Nationality

Article 7 provides that all children are entitled to the "right to acquire a nationality" and States Parties are particularly reminded of the importance of this "where the child would otherwise be stateless" (article 7, see page 103). Normally the flight of a refugee, including a child, leaves his or her nationality status untouched. However refugees are sometimes arbitrarily deprived of their nationality, and children born to refugees in the country of asylum are sometimes denied nationality by that country (despite having laws granting nationality by reason of birthplace) and also by the country from which their parents fled.

The Committee has expressed concern, for example, over Chile and Lebanon:

"The Committee notes with concern that the Chilean legislation does not regulate the status of non-accompanied children, who are therefore considered stateless." (Chile CRC/C/15/Add.173, para. 47)

"The Committee is concerned at the absence of legislative or administrative provisions to protect refugee children. Issues of concern include the fact that only men may confer citizenship upon their children…" (Lebanon CRC/C/15/Add. 169, para. 52)

This was still a matter of concern when Lebanon made its Third Report.

article 22

The special needs of adolescent refugees

UNHCR points out that: "The needs of young children are usually evident as adequate nutrition, health care and support are essential for mere survival. The needs of older children, and particularly those of adolescents who are mid-way between childhood and full maturity, may be less visible but are of equal importance…

"Unaccompanied and separated adolescents may find themselves in situations of great responsibility for themselves and others. They may be difficult to place in foster families, and, moreover, may be part of child-headed households assuming responsibility for younger children. Access to post-primary education, vocational training and income-generating opportunities are the key means of supporting the rights and capacities of adolescents to develop life skills and become self-sufficient. Examples of such activities are the vocational skills training programmes in Azerbaijan, the small business management projects in Burkina Faso and the assistance programme for returnees in Burundi under which returning adolescents are given a plot of land, a house kit and are encouraged to build a house. In Myanmar, special assistance is given to unaccompanied and separated children to enable them to become self sufficient."

(From Summary Note – UNHCR's Strategy and Activities concerning Refugee Children and Adolescents, September 2000)

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

article 22

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 22, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 22 is relevant to the **departments of justice, foreign affairs, home affairs, social welfare, health, social security and education**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 22 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 22 likely to include the training of **social workers, teachers, port and border control officers, lawyers, interpreters, child development experts, mental health personnel and child advocates**)?

• Specific issues in implementing article 22

- ☐ Has the State ratified the Convention relating to the Status of Refugees (1951) as amended by the Protocol relating to the Status of Refugees (1967)?
- ☐ Has the State ratified the Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961)?
- ☐ Has the State enacted legislation on asylum land does this include provisions relating to refugee children?
- ☐ Has the State established procedures for determining refugee status (including, when necessary, mandating UNHCR to make this determination)?
- ☐ Do children have access to such procedures irrespective of their age and of the fact of being unaccompanied or separated?
- ☐ Do the procedures for determining refugee status take into account the special needs and rights of children, particularly when the child is unaccompanied or separated from his or her previous legal or customary primary caregiver?

How to use the checklist, *see page XIX*

- ☐ Are the interviews and hearings conducted in a child-friendly environment?
- ☐ Are the child's views heard or represented in these proceedings?

Are unaccompanied or separated children seeking asylum

- ☐ provided with legal representation?
- ☐ provided with a guardian?
- ☐ provided with professional interpreters?
- ☐ provided with decision makers experienced in child development?
- ☐ given the benefit of the doubt in relation to their claim for refugee status?

- ☐ Are applications by child refugees and/or their parents for the purpose of family reunion treated in a positive, humane and expeditious manner?
- ☐ Are unaccompanied or separated children who are refused refugee status allowed to remain in the receiving country when to do so would be in their best interests?
- ☐ Are child refugees or children seeking refugee status given special assistance and protection appropriate to all their needs and in accordance with their rights under the Convention?
- ☐ Are children who have been refused refugee status but are nonetheless permitted to stay in the country entitled to the same assistance and facilities on the same basis as children with accredited status?
- ☐ Are such children informed of these rights in their own language?
- ☐ Are such children only deprived of their liberty as a measure of last resort and for the shortest appropriate period of time?
- ☐ Are they able to challenge such deprivation of liberty in a fair hearing?
- ☐ Are the conditions of detention humane and conducive to the health, self-respect, dignity and social integration of the child?

Are refugee and asylum-seeking children

- ☐ accommodated in safe and habitable environments, wherever possible with their family?
- ☐ in receipt of education which recognizes their culture, language and need for social integration?
- ☐ provided with appropriate support and rehabilitative care for any traumas they may have suffered?
- ☐ in receipt of all necessary health care?

- ☐ Are the particular needs of adolescent refugees recognized (for example to develop skills which will allow them to become self-sufficient)?
- ☐ Does the State cooperate with non-governmental organizations or intergovernmental organizations acting in association with the United Nations in respect of refugee and asylum-seeking children and in particular with the United Nations High Commissioner for Refugees and the International Committee of the Red Cross?
- ☐ Are all efforts made to trace family members of such children?
- ☐ Do such efforts ensure that the child and the child's family members are not endangered?

How to use the checklist, see page XIX

Reminder: **The Convention is indivisible and its articles interdependent. Article 22 should not be considered in isolation.**

Particular regard should be paid to: The other general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 22 include:

Article 7: child's right to nationality and to know and be cared for by parents
Article 8: preservation of child's identity
Article 9: non-separation from parents except when necessary in best interests
Article 10: international family reunification
Article 16: protection from arbitrary interference with privacy, family and home
Article 20: children deprived of their family environment
Article 21: adoption
Article 30: children of minorities or indigenous peoples
Article 37: deprivation of liberty as a last resort
Article 38: children affected by armed conflict
Article 39: rehabilitative care for child victims
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Rights of children with disabilities

Text of Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Summary

Article 2, requiring States to secure all the rights in the Convention on the Rights of the Child without discrimination of any kind, includes the child's or his or her parents' or legal guardian's disability among the non-exclusive list of grounds for discrimination. Article 23 provides further guidance on realizing the rights of children with disabilities. The child with disabilities should be provided with conditions for living that "promote self-reliance" and facilitate "active participation in the community". Paragraphs 2 and 3 set out the right of the child with disabilities to "special care", again stressing that assistance should be designed to ensure "effective access" to various services, "in a manner conducive to the child's achieving the fullest possible social integration and individual development..." Paragraph 4 promotes international exchange of information to improve the capabilities and skills of States Parties.

In December 2006, the United Nations General Assembly adopted the Convention on the Rights of Persons with Disabilities. The Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the General Assembly in 1993, was the first detailed instrument reaffirming rights for all people with disabilities.

The Committee on the Rights of the Child held a Day of General Discussion on "The rights of children with disabilities" in 1997 and adopted detailed recommendations. In 2006 it adopted its General Comment No. 9 on "The rights of children with disabilities". The General Comment quotes United Nations estimates suggesting that there are 500 million to 650 million persons with disabilities, approximately 10 per cent of the world population, 150 million of whom are children. ■

Recognizing the human rights of persons with disabilities

Background

The adoption in December 2006 of the Convention on the Rights of Persons with Disabilities is the culmination of a long struggle to ensure full and explicit recognition of people with disabilities as equal holders of human rights. The only reference to disability in the International Bill of Human Rights is in article 25 of the Universal Declaration of Human Rights, which recognizes that everyone has "the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control". Disability is not mentioned in the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights.

During the 1970s, the United Nations General Assembly adopted the Declaration on the Rights of Mentally Retarded Persons (20 December 1971) and the Declaration on the Rights of Disabled Persons (9 December 1975), which proclaimed that people with disabilities have the same civil and political rights as other human beings. 1981 was designated as the International Year of Disabled Persons, with the theme "Full participation and equality". In 1982 the General Assembly adopted the World Programme of Action Concerning Disabled Persons, which stressed that "More than 500 million people in the world are disabled as a consequence of mental, physical or sensory impairment. They are entitled to the same rights as all other human beings and to equal opportunities. Too often their lives are handicapped by physical and social barriers in society which hamper their full participation. Because of this, millions of children and adults in all parts of the world often face a life that is segregated and debased."

Within the United Nations Commission on Human Rights, the Sub-Commission on the Promotion and Protection of Human Rights adopted a recommendation that Governments give consideration to difficulties encountered by persons with disabilities in the enjoyment of universally proclaimed human rights, as well as to the need to strengthen procedures for them to bring allegations of violations of their human rights to a competent body vested with the authority to act on such complaints, or to the attention of the Government (resolution 1982/1). In 1984, the Special Rapporteur on Human Rights and Disability was appointed. The final report prepared by the Special Rapporteur in 1991 notes that "In the majority of countries, at least 1 out of 10 persons has a physical, mental or sensory impairment, and at least 25 per cent of the entire population are adversely affected by the presence of disabilities ... these persons frequently live in deplorable conditions, owing to the presence of physical and social barriers which prevent their integration and full participation in the community. As a result, millions of children and adults throughout the world are segregated and deprived of virtually all their rights, and lead a wretched, marginal life." (E/CN.4/Sub.2/1991/31, para. 3)

In 1987, the Global Meeting of Experts to Review the World Programme of Action Concerning Disabled Persons at the mid-point of the United Nations Decade of Disabled Persons in Stockholm recommended that the General Assembly

should convene a special conference to draft an international convention on the elimination of all forms of discrimination against persons with disabilities, to be ratified by States by the end of the Decade. A draft outline was prepared by Italy and presented to the General Assembly in 1987. There were further presentations in 1989, but no consensus could be reached: in the opinion of many representatives, existing human rights documents seemed to guarantee persons with disabilities the same rights as other persons. Following these debates in the General Assembly, the Economic and Social Council, at its first regular session in 1990, agreed to concentrate on the elaboration of an international instrument of a different kind. The Commission for Social Development was authorized to establish an ad hoc open-ended Working Group of government experts to elaborate standard rules on the equalization of opportunities for children, youth and adults with disabilities, in close collaboration with the specialized agencies, other intergovernmental bodies and NGOs, especially organizations of persons with disabilities.

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities was adopted by the United Nations General Assembly at its forty-eighth session on 20 December 1993 (resolution 48/96). The introduction to the Rules notes that they were developed on the basis of experience gained during the United Nations Decade of Disabled Persons: "The International Bill of Human Rights, comprising the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, as well as the World Programme of Action concerning Disabled Persons, constitute the political and moral foundation for the Rules.

A lengthy 1994 General Comment on persons with disabilities from the Committee on Economic, Social and Cultural Rights drew attention to the importance of the Rules, and also the importance of addressing disability explicitly: "The absence of an explicit, disability-related provision in the Covenant [on Economic, Social and Cultural Rights] can be attributed to the lack of awareness of the importance of addressing this issue explicitly, rather than only by implication, at the time of the drafting of the Covenant over a quarter of a century ago. More recent international human rights instruments have, however, addressed the issue specifically. They include the Convention on the Rights of the Child (article 23); the African Charter on Human and Peoples' Rights (article 18(4)); and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (article 18). Thus it is now very widely accepted that the human rights of persons with disabilities must be protected and promoted through general, as well as specially designed, laws, policies and programmes." (Committee on Economic, Social and Cultural Rights, General Comment No. 5, HRI/GEN/1/Rev.8, para. 6, p. 26)

But the proposal for a convention continued to be advocated, and in 2001 the General Assembly, in resolution 56/168 of 19 December 2001, decided to establish an Ad Hoc Committee "to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, based on a holistic approach in the work done in the fields of social development, human rights and non-discrimination and taking into account the recommendations of the Commission on Human Rights and the Commission for Social Development". The Ad Hoc Committee completed its work in 2006 and the Convention was adopted in December 2006 and opened for signature in March 2007. It comes into force following ratification by 20 States.

In a statement to the Human Rights Council in September 2006, the Special Rapporteur on Disability of the Commission for Social Development states that adoption of the Convention ends decades of struggle for recognition of persons with disabilities and their rights, "as human rights requiring protection through a strong, legally binding instrument to which States can commit, not only as a moral obligation, but as a legal one". (The position of Special Rapporteur was established in 1994 to monitor implementation of the Standard Rules.) In a 2002 report, the Special Rapporteur proposed a Supplement to the Standard Rules (E/CN.5/2002/4 and annex), to complement and develop the text in certain areas identified by him in a previous report to the Commission for Social Development (E/CN.5/2000/3, annex); these included: gender concerns; housing and communication issues; the needs of children and older persons; the needs of persons with developmental and psychiatric disabilities; and the needs of persons with disabilities in poverty situations. In the view of the Special Rapporteur, while the Convention fulfils the need for a legally binding document, the Standard Rules together with the proposed Supplement "represent the software for actualizing the text and the spirit of the Convention" (E/CN.5/2005/5). A 2006 Report of the Special

Rapporteur provides analysis of responses to a detailed questionnaire survey of States' progress on implementation of the Rules (see E/CN.5/2006/4).

As of March 2006, the United Nations Programme on Disability has been consolidated into the Secretariat for the Convention on the Rights of Persons with Disabilities. It is the lead programme on disability within the United Nations system and is housed in the Division for Social Policy and Development at the Department of Economic and Social Affairs of the United Nations Secretariat. The major objectives of the Secretariat are: to support the full and effective participation of persons with disabilities in social life and development; to advance the rights and protect the dignity of persons with disabilities; and to promote equal access to employment, education, information, goods and services.

The Convention on the Rights of Persons with Disabilities

The purpose of the Convention, set out in article 1, is "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity". The Preamble recognizes that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalls the relevant obligations undertaken by States Parties to the Convention on the Rights of the Child. Article 7 – "Children with disabilities" – reflects the Preamble requiring States to "take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children".

The Convention contains a number of provisions specifically referring to children. Some of these simply reflect provisions in the Convention on the Rights of the Child, for example the reference to respect for the evolving capacities of children with disabilities (article 3(h)), the best interests principle and the right to express views and have them given due weight (article 7(2) and (3)). Other provisions go further; for example, setting out more specific obligations to ensure a properly supported inclusive education system at all levels (article 24) and to ensure that in no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents (article 23(4)). Article 41 of the Convention on the Rights of the Child emphasizes that nothing in the Convention shall affect any provisions which are more conducive to the realization of the rights of the child and are contained in other instruments ratified by the State (see page 625).

The Convention on the Rights of Persons with Disabilities establishes a Committee to monitor its implementation. An Optional Protocol to the Convention, adopted simultaneously, allows States to recognize the competence of the Committee to receive and consider communications from individuals or groups claiming to be victims of violations of the Convention (for full text, see www.ohchr.org/english/law/).

Children's rights and the Convention on the Rights of Persons with Disabilities

This summary covers the Convention's purpose, definitions and principles and indicates provisions specifically related to the rights of children with disabilities; it is not a comprehensive summary of the Convention. (For full text, see www.ohchr.org/english/law/disabilities-convention.htm.)

The Preamble to the Convention recognizes that disability is an evolving concept; disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others. The Preamble also recognizes that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalls the relevant obligations undertaken by States Parties to the Convention on the Rights of the Child.

The Convention's purpose is "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity". The Convention does not define "disabilities", but it indicates: "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others".

The Convention defines "discrimination on the basis of disability" as "any 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". It includes all forms of discrimination, including denial of "reasonable accommodation", which is defined as "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms" (article 2).

The Convention also defines the related concept of "universal design", which means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. And it indicates that "universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed (article 2). This concept is referred to in article 4, under which "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 disability…" The article lists various duties of States, including "to undertake or promote research and development of universally designed goods, services, equipment and facilities, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines".

The "principles" of the Convention (article 3) are:

(a) "Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

(b) Non-discrimination;

(c) Full and effective participation and inclusion in society;

(d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

(e) Equality of opportunity;

(f) Accessibility;

(g) Equality between men and women;

(h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities."

The general obligations of States, set out in article 4, include closely consulting with and actively involving persons with disabilities, including children with disabilities, through their representative organizations, in the implementation of the Convention, and in other decision-making on issues relating to persons with disabilities.

Article 5 requires States Parties to "prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds". In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that "reasonable accommodation" is provided. Specific measures which are necessary to accelerate or achieve *de facto* equality of persons with disabilities are not to be considered discrimination.

Article 7 refers specifically to children with disabilities:

1. "States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right."

Under article 8, on awareness-raising, States undertake to adopt measures including "Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities…" Article 16 requires "all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects". Protection services must be age-, gender- and disability-sensitive. States must put in place "effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted."

Article 18(2) requires that children with disabilities are registered immediately after birth and have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

Under article 23, States must take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, to ensure that:

(a) "The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;

(b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;

(c) Persons with disabilities, including children, retain their fertility on an equal basis with others."

In addition: "States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

"States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

"States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

"States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting." (article 23(2) to (5))

In realizing the right of persons with disabilities to education, without discrimination and on the basis of equal opportunity, States "shall ensure an inclusive education system at all levels…" Article 24 requires that States Parties ensure that persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability; persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

reasonable accommodation of the individual's requirements is provided; and persons with disabilities receive the support required, within the general education system, to facilitate their effective education. Article 24 also sets out a non-exhaustive list of measures to be taken to enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community (see also article 28, page 418).

Under article 25, persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States are required to take specified measures, including to:

"provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes; and

"provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons…"

Under article 26, States must also take "effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life". To that end, States are required to "organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services…"

Article 28 sets out the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and the right to social protection, both without discrimination on the basis of disability.

Article 30 asserts the right of persons with disabilities to take part on an equal basis with others in cultural life, to develop and utilize their creative, artistic and intellectual potential, "not only for their own benefit, but also for the enrichment of society" and to be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture. To enable persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States are required to encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels, as well as having an opportunity to organize, develop and participate in disability-specific sporting and recreational activities. States must ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including in the school system.

General Comment on "The rights of children with disabilities"

In 2006, the Committee on the Rights of the Child adopted General Comment No. 9 on "The rights of children with disabilities". Its aim is to provide guidance and assistance to States in implementing the rights of children with disabilities, "in a comprehensive manner which covers all the provisions of the Convention". The General Comment starts by reviewing the obligations in article 2 (non-discrimination) and article 23 of the Convention (see box for summary and full text at www.ohchr.org/english/bodies/crc/comments.htm). It gives attention to the importance of including children with disabilities in the general measures of implementation adopted by States. Then it provides observations on the meaning and implementation of all other articles for children with disabilities. The General Comment was first proposed in recommendations adopted following the Committee's Day of General Discussion on "The rights of children with disabilities" (Report on the sixteenth session, September/October 1997, CRC/C/69, paras. 338 and 339).

The Committee has commented on disability issues in two other General Comments. In its General Comment No. 7 on "Implementing child rights in early childhood", the Committee notes that this is the period during which disabilities

are usually identified and the impact on children's well-being and development recognized:

"Young children should never be institutionalized solely on the grounds of disability. It is a priority to ensure that they have equal opportunities to participate fully in education and community life, including by the removal of barriers that impede the realization of their rights. Young disabled children are entitled to appropriate specialist assistance, including support for their parents (or other caregivers). Disabled children should at all times be treated with dignity and in ways that encourage their self-reliance..." *(Committee on the Rights of the Child, General Comment No. 7, 2006, CRC/C/GC/7/Rev.1, para. 36(d))*

And in its General Comment No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child", the Committee refers to education and health rights of adolescents with disabilities:

"... the special rights of adolescents with disabilities should be taken into account and assistance provided to ensure that the disabled child/adolescent has effective access to and receives good quality education. States should recognize the principle of equal primary, secondary and tertiary educational opportunities for disabled children/adolescents, where possible in regular schools...
"In accordance with article 23 of the Convention, adolescents with mental and/or physical disabilities have an equal right to the highest attainable standard of physical and mental health. States Parties have an obligation to provide adolescents with disabilities with the means necessary to realize their rights. States Parties should
(a) ensure that health facilities, goods and services are available and accessible to all adolescents with disabilities and that these facilities and services promote their self-reliance and their active participation in the community;
(b) ensure that the necessary equipment and personal support are available to enable them to move around, participate and communicate;
(c) pay specific attention to the special needs relating to the sexuality of adolescents with disabilities; and
(d) remove barriers that hinder adolescents with disabilities in realizing their rights."
(Committee on the Rights of the Child, General Comment No. 4, 2004, CRC/GC/2003/4, paras. 19 and 35)

In examining States' reports up to and including its forty-third session in September/October 2006, the Committee has proposed in Concluding Observations that States should take account of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities and also its own recommendations, adopted following the Day of General Discussion in 1997 (see below). The Committee raises a variety of matters with States, including lack of a national policy or strategy, insufficient data collection, the need for awareness-raising to combat discrimination and the importance of fulfilling the right to education of children with disabilities, and to inclusion in the general education system. For example:

"The Committee recommends that the State Party, taking into account the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the recommendations adopted by the Committee on its day of general discussion on the rights of children with disabilities held on 6 October 1997 (see CRC/C/69):
(a) Complete the survey on persons with disabilities;
(b) Consider developing and adopting a national policy or strategy on persons with disabilities, paying particular attention to children with disabilities;
(c) Consider creating an inter-institutional plan with the support of local government and civil society and thereby strengthen cooperation between teachers, school management, parents, children and the society at large;
(d) Provide all children with disabilities with access to adequate social and health services, including community based support and services, the physical environment, information and communication, and continue its efforts to standardize the provision of services;
(e) Allocate the necessary resources for programmes, medicines, trained staff and facilities for all children with disabilities, especially the ones living in rural areas;
(f) Provide the necessary financial resources for the development of education for children with special needs and further encourage their inclusion into the general educational system and into society;
(g) Collect adequate statistical data on children with disabilities and use disaggregated data in developing policies and programmes to promote equal opportunities for them in society, paying particular attention to children with disabilities living in rural areas; and
(h) Promote awareness and tolerance concerning children with disabilities throughout communities and disseminate information that would assist in eliminating the traditional practice of infanticide." *(Benin CRC/C/BEN/CO/2, para. 50)*

"The Committee recommends that the State Party, taking into account the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (see

The rights of children with disabilities

Committee on the Rights of the Child, General Comment No. 9, 2006: summary

The purpose of the General Comment is to provide guidance and assistance to States Parties in implementing the rights of children with disabilities. The Committee highlights the importance of creating political will and commitment to investigate the causes of disabilities and to put into practice effective action to prevent disability.

The Committee notes that children with disabilities are still experiencing serious difficulties and barriers in the full enjoyment of the rights enshrined in the Convention. The Committee emphasizes that the barriers are not the disabilities, but a combination of social, cultural, attitudinal and physical barriers which children with disabilities encounter in their daily lives. The strategy for action is therefore to take the necessary action to remove those barriers.

Articles 2 and 23: The General Comment first focuses on the key provisions of articles 2 and 23. In relation to article 2, the Committee proposes that States should:

- include disability as a forbidden ground for discrimination in constitutions and/or in specific anti-discrimination laws;
- provide effective remedies in case of violations of the rights of children with disabilities, easily accessible to the children, their parents and/or others caring for the child;
- conduct awareness-raising and educational campaigns with the public and specific groups of professionals to prevent/eliminate discrimination.

The Committee emphasizes the importance of paying particular attention to girls with disabilities, if necessary taking extra measures.

Paragraph 1 of article 23 – the enjoyment of a full and decent life in conditions that ensure dignity, promote self-reliance and facilitate active participation in the community – should be considered the "leading principle" in the implementation of the Convention for children with disabilities. Measures taken, for example in health and education, should explicitly aim at the maximum inclusion of children with disabilities in society.

States Parties should develop and effectively implement a comprehensive policy with a plan of action. This should aim at full enjoyment of the Convention without discrimination, and also ensure that the child with a disability and his/her parents or other carers do receive the special care and assistance they are entitled to, free of charge whenever possible. With reference to paragraphs 2 and 3 of article 23, the Committee urges States to make special care and assistance for children with disabilities a matter of high priority, investing to the maximum extent of available resources in eliminating discrimination and maximising inclusion, and ensuring effective access to and receipt of education, training, health care, recovery, preparation for employment and recreation opportunities.

In relation to paragraph 4, the Committee encourages more active exchange of information on prevention and treatment; it also urges States to pay more attention to children with disabilities in the framework of bilateral or multilateral development assistance.

General measures of implementation: The Committee underlines the need for clear and explicit provisions in legislation for the protection and exercise of the specific rights of children with disabilities and the inclusion in national plans of action of plans and strategies for children with disabilities, with measurable outcomes. There should be a coordination body for children with disabilities, as part of a broader coordination system for the rights of the child or of a national coordination system for persons with disabilities. It is States Parties' ultimate responsibility to oversee that adequate funds are allocated to children with disabilities, along with strict guidelines for service delivery. Data gathering should reflect the actual situation of children with disabilities. In relation to the need for independent monitoring, the Committee emphasizes, with reference to its General Comment No. 2 on "The role of national human rights institutions", that institutions

must be accessible to children with disabilities, not only in the physical sense but also to ensure that these children can raise complaints or issues easily and confidentially. States should support and cooperate with NGOs which provide services for children with disabilities. With reference to article 42 of the Convention, States should conduct systematic awareness-raising and training, including in Braille and appropriate forms and use the mass media, to foster positive attitudes towards children with disabilities.

Other rights in the Convention

The General Comment reviews the rights of children with disabilities in relation to the other articles of the Convention on the Rights of the Child, using the clusters of articles identified for reporting. In the *Implementation Handbook*, the implications of the General Comment are covered under each relevant article:

General principles:
Non-discrimination, paras. 8 to 10;
Best interests of the child, paras. 29 and 30;
Right to life, survival and development, para. 31;
Respect for the views of the child, paras. 32 and 33.

Civil rights and freedoms:
General, para. 34;
Birth registration, paras. 35 – 36;
Access to appropriate information and mass media, paras. 37 and 38;
Accessibility to public transportation and facilities, paras. 39 and 40;

Family environment and alternative care:
Family support and parental responsibilities, para. 41;
Violence, abuse and neglect, paras. 42 to 44;
Family-type alternative care, paras. 45 and 46;
Institutions, paras. 47 to 49;
Periodic review of placement, para. 50;

Basic health and welfare:
Right to health, paras. 51 and 52;
Prevention, paras. 53 to 55;
Early identification, paras. 56 and 57;
Multidisciplinary care, para. 58;
Adolescent health and development, paras. 59 and 60;
Research, para. 61.

Education and leisure:
Quality education, paras. 62 and 63;
Self-esteem and self-reliance, para. 64;
Education in the school system, para. 65;
Inclusive education, paras. 66 and 67;
Career education and vocational training, paras. 68 and 69;
Recreation and cultural activities, paras. 70 and 71;
Sports, para. 72.

Special protection measures:
Juvenile justice system, paras. 73 and 74;
Economic exploitation, para. 75;
Street children, para. 76;
Sexual exploitation, para. 77;
Children in armed conflict, para. 78;
Refugee and internally displaced children, children belonging to minorities and indigenous children, paras. 79 and 80.

(Committee on the Rights of the Child, General Comment No. 9, "The rights of children with disabilities", 2006, CRC/C/GC/9. For full text see www.ohchr.org/english/bodies/crc/comments.htm.)

General Assembly resolution 48/96) and the recommendations adopted by the Committee on its Day of General Discussion on the rights of children with disabilities (see CRC/C/69):
(a) Prevent and prohibit all forms of discrimination against children with disabilities and ensure equal opportunities for their full participation in all spheres of life by implementing the Law No. 220 of 2000 on the rights of persons with disabilities, and by including disability aspects in all relevant policymaking and national planning;
(b) Collect adequate statistical data on children with disabilities and use such disaggregated data in developing policies and programmes to promote their equal opportunities in society, paying particular attention to children with disabilities belonging to the most vulnerable groups, such as children with disabilities living in remote areas of the country and Palestinian refugee children with disabilities, particularly girls;
(c) Provide children with disabilities with access to adequate social and health services and the physical environment, information and communication;
(d) Ensure that public education policy and school curricula reflect in all their aspects the principle of full participation and equality and include children with disabilities in the mainstream school system to the extent possible and, where necessary, establish special education programmes tailored to their special needs;
(e) Develop programmes, including community-based programmes, in order to promote alternatives to institutionalization and allow children with disabilities to stay at home with their families;
(f) Strengthen the functioning and activities of the National Committee for Disabled Affairs and cooperation with non-governmental organizations working in the field of disability issues;
(g) Seek technical cooperation with, among others, UNICEF and WHO." (Lebanon CRC/C/LBN/CO/3, para. 51)

"The Committee recommends that the State Party:
(a) Adopt legislation to protect the rights of children with disabilities in conformity with internationally accepted standards;
(b) Provide early childhood education and care and primary and secondary education for children with disabilities in a way that corresponds to the needs of these children, preferably in mainstream educational facilities, and is conducive to the child's achievement of the fullest possible social integration and individual development, and that it provide adequate support, supervision and training to persons working with children with disabilities, including teachers in mainstream schools, and pay special attention to children not attending school;
(c) Undertake efforts to establish and to implement alternatives to the institutionalization of children with disabilities, including community-based rehabilitation programmes and home-based care;
(d) Undertake awareness-raising campaigns that focus on prevention, inclusive education, family care and the promotion of the rights of children with disabilities, as well as combating negative societal attitudes towards children with disabilities; and
(e) Remove physical barriers to enable effective access of children with disabilities to schools and other institutions and services.
"The Committee also urges the State Party to review existing policies and practice in relation to children with disabilities, giving due attention to the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the recommendations adopted by the Committee on its day of general discussion on the rights of children with disabilities." (Latvia CRC/C/LVA/CO/2, paras. 40 and 41)

Definitions of "disability"

While the Committee on the Rights of the Child has in some cases criticized a "narrow" definition of disability (for example, see China CRC/C/CHN/CO/2, paras. 60 and 61), it has avoided attempting any definition itself. Its General Comment No. 9 states that one of the main challenges in obtaining accurate statistics

"... is the lack of a widely accepted clear definition for disabilities. States Parties are encouraged to establish an appropriate definition that guarantees the inclusion of all children with disabilities so that children with disabilities may benefit from the special protection and programmes developed for them..." (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, para. 19)

The General Comment also quotes (para. 7) the non-exclusive definition in article 1 of the Convention on the Rights of Persons with Disabilities: "Persons with disabilities include those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." Also, the Preamble to this Convention recognizes "that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others".

The Standard Rules states: "The term 'disability' summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature" (Introduction, para. 17).

Discrimination on grounds of disability

article 23

The definition of "discrimination on the basis of disability" in the Convention on the Rights of Persons with Disabilities (see box on page 324) reflects definitions in other instruments (for discussion, see article 2, page 29): "any 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…"

In its General Comment No. 9 on "The rights of children with disabilities", the Committee on the Rights of the Child notes that

"… Discrimination takes place – often de facto *– regarding various aspects of the life and development of children with disabilities. As an example, social discrimination and stigmatization lead to their marginalization and exclusion and may even threaten their survival and development in the form of violence. Discrimination in service provision excludes them from education and denies them access to quality health and social services. The lack of appropriate education and vocational training discriminates against them by denying them job opportunities in the future. Social stigma, fears, overprotection, negative attitudes, misbeliefs and prevailing prejudices against children with disabilities remain strong in many communities leading to the marginalization and alienation of children with disabilities…" (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, para. 8)*

The Committee goes on to propose that in their efforts to prevent and eliminate all forms of discrimination against children with disabilities, States should take the following measures:

"Include explicitly in constitutional provisions on non-discrimination disability as a forbidden ground for discrimination and/or include specific prohibition of discrimination on the ground of disability in specific anti-discrimination laws or legal provisions; provide for effective remedies in case of violations of the rights of children with disabilities, which are easily accessible for children with disabilities and their parents and/or others caring for the child; conduct awareness raising and educational campaigns targeting the public at large and specific groups of professionals with a view to preventing and eliminating the de facto discrimination against children with disabilities." (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, para. 9)

The Committee highlights the need to give additional attention to discrimination against girls with disabilities, who

"… are often even more vulnerable to discrimination in societies due to gender discrimination. In this context, States Parties are requested to pay particular attention to girls with disabilities by taking the necessary measures, and when needed extra measures, in order to ensure that they are well protected, have access to all services and are fully included in society." (CRC/C/GC/9, para. 10)

The Committee frequently identifies forms of discrimination against children with disabilities in its examination of States' reports. Its concerns are often general. For example:

"Notwithstanding the provision prohibiting discrimination against children with disabilities and the State Party's continuous efforts to support these children through targeted State welfare measures, including direct and indirect assistance, the Committee is concerned about persisting de facto *discrimination. It notes with concern that equal opportunities for children with disabilities are jeopardized, for example, by their limited access to public buildings, government services and public transportation, and that social stigma, fears and misconceptions surrounding disabilities remain strong in society leading to the marginalization and alienation of these children." (Algeria CRC/C/15/Add.269, para. 53)*

But the Committee also identifies state-specific forms of discrimination. When it examined China's Second Report, the Committee noted that the exception to the "one-child policy", whereby families who have a child with disabilities are allowed to have a second child, promotes *de facto* discrimination against children with disabilities (China CRC/C/CHN/CO/2, para. 60).

It commented to Hungary on marginalization of both children with disabilities and children with parents with disabilities:

"The Committee is concerned about the lack of an inclusion policy and integration mechanisms and inadequate assistance for children with disabilities.

"The Committee recommends that the State Party: ... Pursue further efforts to avoid the marginalization and exclusion of children with disabilities and of children with disabled parents." (Hungary CRC/C/HUN/CO/2, paras. 39 and 40(d))

Causes of disability

Many articles in the Convention on the Rights of the Child are related to causes of disability, and thus their implementation can help to prevent disability: for example, articles concerned with protecting the child from involvement in armed conflict and protecting the child from violence and from various forms of exploitation. Article 6 (right to life and maximum survival and development) and article 24 (right to health and health services) are relevant to the prevention of disability, as well as to respecting the right of the disabled child to special care.

The final report of the Special Rapporteur on Human Rights and Disability in 1991 lists the following causes, which appeared most often in responses the Rapporteur received from governmental and non-governmental sources. Most but not all of these are causes of disability in childhood: "heredity, birth defects, lack of care during pregnancy and childbirth because of lack of coverage or ignorance, insalubrious housing, natural disasters, illiteracy and the resulting lack of information on available health services, poor sanitation and hygiene, congenital diseases, malnutrition, traffic accidents, work-related accidents and illnesses, sports accidents, the so-called diseases of 'civilization' (cardiovascular disease, mental and nervous disorders, the use of certain chemicals, change of diet and lifestyle, etc.), marriage between close relatives, accidents in the home, respiratory diseases, metabolic diseases (diabetes, kidney failure, etc.), drugs, alcohol, smoking, high blood pressure, old age, Chagas' disease, poliomyelitis, measles, etc. Non-governmental sources also place particular emphasis on factors related to the environment, air and water pollution, scientific experiments conducted without the informed consent of the victims, terrorist violence, wars, intentional physical mutilations carried out by the authorities and other attacks on the physical and mental integrity of persons, as well as violations of human rights and humanitarian law in general." (E/CN.4/Sub.2/1991/31, para. 109)

The Special Rapporteur on Human Rights and Disability mentions some deliberately inflicted forms of punishment and other practices as causing disability: amputation as a punishment; the institutionalization of people with disabilities, institutional abuse, including the use of drugs; forced sterilization, castration and female circumcision (genital mutilation); and the blinding of detainees as an alternative to detention (E/CN.4/Sub.2/1991/31, para. 174). All such practices not only cause physical disabilities but also affect mental health.

The Special Rapporteur also refers to physical and psychological ill-treatment of children, both within and outside of the family, as an "extremely serious cause of disability in both developed and developing countries. The harm that can be caused in children by their parents or other persons beating, insulting, humiliating and maltreating them can be so great that in many cases it causes mental illness, social maladjustment, difficulties in school or at work, sexual impairment, etc." (E/CN.4/Sub.2/1991/31, para. 139)

The prevention of all forms of violence and exploitation, highlighted in various articles of the Convention, are relevant to prevention of disability: in particular articles 19 (protection from all forms of physical or mental violence), 32 (economic exploitation), 34 (sexual exploitation), 36 (other forms of exploitation) and 37 (prohibition of torture and other cruel, inhuman or degrading treatment or punishment).

The Committee's General Comment No. 9 on "The rights of children with disabilities" also addresses the causes of disability and prevention:

"Causes of disabilities are multiple and therefore prevention varies. Inherited diseases that often cause disabilities can be prevented in some societies that practice consanguineous marriages and under such circumstances public awareness and appropriate pre-conception testing would be recommended. Communicable diseases are still the cause of many disabilities around the world and immunization programmes need to be stepped up aiming to achieve universal immunization against all preventable communicable diseases. Poor nutrition has a long-term impact upon children's development and it can lead to disabilities, such as blindness caused by vitamin A deficiency. The Committee recommends that States Parties introduce and strengthen prenatal care for children and ensure adequate quality of the assistance during the delivery. It also recommends that States Parties provide adequate post-natal health care services and develop campaigns to inform parents and others taking care of the child about basic child health care and nutrition. In this regard, the Committee also recommends that the States Parties continue to cooperate and seek technical assistance with, among others, WHO and UNICEF.

"Domestic and road traffic accidents are a major cause of disability in some countries and policies to prevent this need to be established and implemented such as the laws on seat belts and traffic safety. Lifestyle issues, such as alcohol and drug abuse during pregnancy, are also preventable causes of disabilities and in some countries the fetal alcohol syndrome presents a major cause for concern. Public education, identification and support for pregnant mothers who may be abusing such substances are just some of the measures that may be taken to prevent cause of disability among children. Hazardous environment toxins also contribute to the causes of many disabilities. Toxins, such as lead, mercury, asbestos, etc., are commonly found in most countries. Countries should establish and implement policies to prevent dumping of hazardous materials and other means of polluting the environment. Furthermore, strict guidelines and safeguards should also be established to prevent radiation accidents..." *(Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, paras.53 and 54)*

The General Comment goes on to highlight the impact of armed conflict and in particular the dangers posed by landmines and other unexploded ordnance (see article 38, page 585):

"Armed conflicts and their aftermath, including availability of and accessibility to small arms and light weapons, are also major causes of disabilities. States Parties are obliged to take all necessary measures to protect children from the detrimental effects of war and armed violence and to ensure that children affected by armed conflict have access to adequate health and social services, including psychosocial recovery and social reintegration. In particular, the Committee stresses the importance of educating children, parents and the public at large about the dangers of landmines and unexploded ordnance in order to prevent injury and death. It is crucial that States Parties continue to locate landmines and unexploded ordnance, take measures to keep children away from suspected areas, and strengthen their de-mining activities and, when appropriate, seek the necessary technical and financial support within a framework of international cooperation, including from United Nations agencies." *(Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, paras.53 to 55. See also paras. 23 and 78.)*

The Graça Machel study on the *Impact of Armed Conflict on Children* states that millions of children are killed by armed conflicts, "but three times as many are seriously injured or permanently disabled by it. According to WHO, armed conflict and political violence are the leading causes of injury, impairment and physical disability and primarily responsible for the conditions of over 4 million children who currently live with disabilities… The lack of basic services and the destruction of health facilities during armed conflict mean that children living with disabilities get little support..." (A/51/306, 1996, para. 145. See also article 38, page 577.)

The Committee's General Comment also notes that causes, prevention and management of disabilities do not receive much-needed attention on national and international research agendas:

"States Parties are encouraged to award this issue priority status ensuring funding and monitoring of disability-focused research, paying particular attention to ethical implications." *(CRC/C/GC/9, para. 61)*

The World Programme of Action Concerning Disabled Persons notes that the relationship between disability and poverty has been clearly established: "While the risk of impairment is much greater for the poverty-stricken, the converse is also true. The birth of an impaired child, or the occurrence of disability in the family, often places heavy demands on the limited resources of the family and strains on its morale, thus thrusting it deeper into poverty. The combined effect of these factors results in higher proportions of disabled persons among the poorest strata of society. For this reason, the number of affected families living at the poverty level steadily increases in absolute terms. The negative impact of these trends seriously hinders the development process." (World Programme of Action, para. 41).

The Preamble to the Convention on the Rights of Persons with Disabilities also highlights "the fact that the majority of persons with disabilities live in conditions of poverty" and recognizes the critical need to address the negative impact of poverty on persons with disabilities.

"... a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation"

The Committee states in its General Comment No. 9 on "The rights of children with disabilities" that the first paragraph of article 23

"... should be considered as the leading principle of the implementation of the Convention for children with disabilities: the enjoyment of a full and decent life in conditions that ensure dignity, promote self reliance and facilitate active participation in the community. The measures taken by States

Parties regarding the realization of the rights of children with disabilities should be directed towards this goal. The core message of this paragraph is that children with disabilities should be included in the society. Measures taken for the implementation of the rights in the Convention regarding children with disabilities, for example in the areas of education and health, should explicitly aim at the maximum inclusion of those children in society." (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, para. 11)

Participation rights of children with disabilities

Children with disabilities have the same rights to participation in decision-making as other children, under article 12 (see also page 160). In order to equalize their opportunities to participation, special training and strategies may be required, as well as adaptation of buildings and programmes, and the provision of appropriate technologies. The Convention on the Rights of Persons with Disabilities highlights this in article 7: "States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right." Also, the general obligations of States listed in article 4 of the new Convention include closely consulting with and actively involving persons with disabilities, including children with disabilities, through their representative organizations, in the implementation of the Convention, and in other decision-making on issues relating to persons with disabilities.

In its General Comment No. 9 on "The rights of children with disabilities", the Committee notes that:

"More often than not, adults with and without disabilities make policies and decisions related to children with disabilities while the children themselves are left out of the process. It is essential that children with disabilities are heard in all procedures affecting them and that their views be respected in accordance with their evolving capacities. This should include their representation in various bodies such as parliament, committees and other forums where they voice views and participate in making the decisions that affect them as children in general and as children with disabilities specifically. Engaging them in such a process not only ensures that the policies are targeted to their needs and desires, it is also a valuable tool of inclusion since it ensures that the decision-making process is a participatory one. Children should be equipped with whatever mode of communication to facilitate expressing their views. Furthermore, States Parties should support the development of training for families and professionals on promoting and respecting the evolving capacities of children to take increasing responsibilities for decision-making in their own lives." (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, para. 32. See also article 12, page 160.)

The General Comment also highlights the fact that children with disabilities are not often heard in separation and placement decisions:

"In general, decision-making processes do not attach enough weight to children as partners even though these decisions have a far-reaching impact on the child's life and future. Therefore, the Committee recommends that States Parties continue and strengthen their efforts to take into consideration the views of children with disabilities and facilitate their participation in all matters affecting them within the evaluation, separation and placement process, in out-of-home care and during the transition process. The Committee also emphasizes that children should be heard throughout the protection measure process, before making the decision as well as during and after its implementation." (CRC/C/GC/9, para. 48)

Inclusive education for children with disabilities

The Committee on the Rights of the Child has expressed concern about realization of the basic right to education for children with disabilities (article 28) and about the low proportion of these children enrolled in schools worldwide. In its examination of States Parties' reports and in its General Comment No. 9 on "The rights of children with disabilities", the Committee has gone beyond this general concern about the right to education to emphasize the importance of recognizing the right of children with disabilities to inclusion in regular schools.

The Convention on the Rights of Persons with Disabilities is unequivocal in its support for inclusive education. With a view to realizing the right to education without discrimination and on the basis of equal opportunity, "States Parties shall ensure an inclusive education system at all levels and life-long learning directed to:

(a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

(b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

(c) Enabling persons with disabilities to participate effectively in a free society."

States are required to ensure that:

- children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- children with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- "reasonable accommodation" of the individual's requirements is provided;
- persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
- effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.
- In addition, States must enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. Measures to be taken by States include:

  (a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

  (b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

  (c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deaf-blind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

- States must also take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education: "Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities".
- States must also ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others.

The Committee on the Rights of the Child consistently recommends development of inclusive education systems:

"The Committee notes with concern that insufficient efforts are being made to include children with disabilities in the mainstream system of education as they are more often than not sent to corrective 'auxiliary schools' and 'correcting classes'. It is also concerned at the significant over-representation of children with disabilities in boarding schools.
"The Committee recommends that the State Party take all necessary measures:
(a) To address the issue of discrimination against children with disabilities;
(b) To ensure that children with disabilities have equal access to services, taking into consideration the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96);
(c) To review the placement of children with disabilities in boarding schools with a view to limiting such placements only to those cases where they are in the best interests of the child;
(d) To provide equal educational opportunities for children with disabilities, including by abolishing the practice of 'corrective' and 'auxiliary schools', by providing the necessary support and by ensuring that teachers are trained to educate children with disabilities in regular schools." *(Russian Federation CRC/C/RUS/CO/3, paras. 49 and 50)*

The Committee expressed concern at "a strong medical approach" in Azerbaijan which did not facilitate inclusion:

"While the Committee notes the measures taken by the State Party in this regard, including the adoption of the Persons with Special Health Needs Act, it is concerned about the inadequate assistance for children in need of special care and at stereotyping and social segregation of children with disabilities also due to the lack of an adequate legislation granting equal rights to them.
"The Committee is also concerned that children with disabilities do not have access to the mainstream education service and that a strong medical approach to this problem does not facilitate their inclusion.

"The Committee recommends that the State Party: … Ensure that children with disabilities may exercise their right to education and facilitate inclusion in the mainstream education system; undertake greater efforts to make available the necessary professional (i.e., disability specialists) and financial resources, especially at the local level, and to promote and expand community-based rehabilitation programmes, including parent support groups; pursue efforts to avoid the marginalization and exclusion of children with disabilities." *(Azerbaijan CRC/C/AZE/CO/2, paras. 46 to 48)*

In 1994, following five regional seminars, a World Conference on Special Needs Education, representing 92 Governments and 25 international organizations, was held and adopted "The Salamanca Statement and Framework for Action on Special Needs Education" (more than 300 participants were brought together by UNESCO and the Government of Spain). The Statement emphasizes that "those with special educational needs must have access to regular schools which should accommodate them within a child-centred pedagogy capable of meeting those needs; regular schools with this inclusive orientation are the most effective means of combating discriminatory attitudes, creating welcoming communities, building an inclusive society and achieving education for all; moreover, they provide an effective education to the majority of children and improve the efficiency and ultimately the cost-effectiveness of the entire education system". The Statement calls on all Governments "to give the highest policy and budgetary priority to improve their education systems to enable them to include all children regardless of individual differences or difficulties". (The Salamanca Statement and Framework for Action on Special Needs Education, UNESCO ED-94/WS/18, 1994)

The right of the disabled child to special care and assistance designed to promote the fullest possible social integration and individual development

Paragraphs 2 and 3 of article 23 acknowledge the need for positive action to equalize opportunities for children with disabilities. In its General Comment No. 9 on "The rights of children with disabilities", the Committee observes in relation to these paragraphs:

"... (a) The provision of special care and assistance is subject to available resources and free of charge whenever possible. The Committee urges the States Parties to make the special care and assistance to children with disabilities a matter of high priority and to invest to the maximum extent of available resources in the elimination of the discrimination of children with disabilities and their maximum inclusion in society.
(b) Care and assistance shall be designed to ensure that children with disabilities have effective access to and receive education, training, health care services, recovery services, preparation for employment and recreation opportunities. The Committee when dealing with specific areas of the Convention hereafter will elaborate on the measures necessary to achieve this." *(Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, para. 14)*

The words "subject to available resources" reflect the general principle found in article 4, and a similar provision in article 27. Assistance must be requested and must be appropriate to the child's condition and to the circumstances of parents or others caring for the child. It should be provided free "whenever possible, taking into account the financial resources of the parents and others caring for the child" (article 23(3)).

The purpose of the assistance is to ensure that the child has "effective access" to a range of services in a manner "conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development".

Avoiding institutionalization of children with disabilities

The Convention on the Rights of Persons with Disabilities reflects article 9 of the Convention on the Rights of the Child: "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child." And it adds: "In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents." Where the immediate family is unable to care for a child with disabilities, States shall "undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting" (article 23(4) and (5)). The emphasis in article 23 of the Convention on the Rights of the Child on "the fullest possible social integration" implies minimizing the institutionalization of children with disabilities. Article 20 also supports non-institutional placements for children deprived of their family environment (see page 278), and in the light of article 2 this must apply equally to children with disabilities.

The Committee on the Rights of the Child pursues de-institutionalization in its General Comment No. 9 on "The rights of children with disabilities":

"The Committee has often expressed its concern at the high number of children with disabilities placed in institutions and that institutionalization is the preferred placement option in many countries. The quality of care provided, whether educational, medical or rehabilitative, is often much inferior to the standards necessary for the care of children with disabilities either because of the lack of standards identified or lack of implementation and monitoring of these standards. Institutions are also a particular setting where children with disabilities are more vulnerable to mental, physical, sexual and other forms of abuse as well as neglect and negligent treatment... The Committee therefore urges States Parties to use the placement in institutions only as a measure of last resort, when it is absolutely necessary and in the best interests of the child... It recommends that the States Parties prevent the use of placement in institution merely with the goal of limiting the child's liberty or freedom of movement. In addition, attention should be paid to transforming existing institutions, with a focus on small residential care facilities organized around the rights and needs of the child, to developing national standards for care in institutions, and to establishing rigorous screening and monitoring procedures to ensure effective implementation of these standards.
"In addressing institutionalization, States Parties are therefore urged to set up programmes for de-institutionalization of children with disabilities, re-placing them with their families, extended families or foster care system. Parents and other extended family members should be provided with the necessary and systematic support/training for including their child back into their home environment." (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, paras. 47 and 49)

Restriction of liberty of children with disabilities

Children who are detained because of mental illness should have the various safeguards provided by the Convention on the Rights of the Child and relevant United Nations rules and guidelines. Under article 37 of the Convention any restriction of liberty must be authorized by legislation, must not be arbitrary and must only be used as a measure of last resort and for the shortest appropriate time. Article 37(c) requires that every child deprived of liberty "shall be separated from adults unless it is considered in the child's best interest not to do so". The United Nations Rules for the Protection of Juveniles Deprived of their Liberty has a similar provision. Its rule 29 applies equally to children detained because of mental illness. The Committee on the Rights of the Child has implied that in any institutional placement, children with disabilities should be separated from adults, and under article 25, it has also noted the importance of the regular review of placement and treatment (see also article 37, page 547).

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty notes in rule 53: "A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release." The Rules also notes that any juvenile who "demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer" (rule 51).

International cooperation: article 23(4)

Article 23(4) requires States Parties to promote through international cooperation the exchange of information to improve their capabilities and skills in relation to children with disabilities, with particular account being taken of the needs of developing countries. The Committee's General Comment No. 9 on "The rights of children with disabilities" notes that the international exchange of information between States Parties in the areas of prevention and treatment is quite limited:

"The Committee recommends that States Parties take effective, and where appropriate targeted, measures for an active promotion of information as envisaged by article 23, paragraph 4, in order to enable States Parties to improve their capabilities and skills in the areas of prevention and treatment of disabilities of children.
"It is often not clear how and to which degree the needs of developing countries are taken into account as required by article 23, paragraph 4. The Committee strongly recommends States Parties to ensure that in the framework of bilateral or multilateral development assistance particular attention is paid to children with disabilities and their survival and development in accordance with the provisions of the Convention, for example, by developing and implementing special programmes aiming at their inclusion in society and allocating earmarked budgets to that effect. States Parties are invited to provide information in their reports to the Committee on the activities and results of this

international cooperation." *(Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, paras. 15 and 16)*

The Convention on the Rights of Persons with Disabilities proposes extensive international cooperation, which States should ensure is "inclusive of and accessible to" persons with disabilities:

"States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, *inter alia*:

(a) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;

(b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;

(c) Facilitating cooperation in research and access to scientific and technical knowledge;

(d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

"The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention." (Article 39)

article 23

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 23, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 23 is relevant to **all government departments, and any coordinating agency set up to consider disability issues**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 23 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 23 likely to include the training of **all those working with or for children with disabilities and their families, and parenting education**)?

• Specific issues in implementing article 23

- ☐ Does the State have a national coordinating committee or similar body to serve as a focal point for disability matters?
- ☐ Has the State reviewed legislation, policy and practice in the light of the Convention on the Rights of Persons with Disabilities?
- ☐ Has the State ratified the Convention and its Optional Protocol (open for signature from March 2007)?
- ☐ Has the State reviewed legislation, policy and practice in the light of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities?
- ☐ Is there anti-discrimination legislation covering discrimination against children with disabilities?
- ☐ Does legislation in the State guarantee the child with disabilities enjoyment of all the rights in the Convention without discrimination?

How to use the checklist, *see page XIX*

- ☐ Do all children with disabilities and their representatives have easy access to an independent mechanism for considering complaints relating to discrimination on the grounds of disability?
- ☐ Is special care and assistance available on application for all children with disabilities and for those caring for him/her in the State?

Is such special care and assistance provided
- ☐ free of charge in all cases?
- ☐ on a means-tested basis?

- ☐ Are there national and local arrangements to ensure that parents are given advice, financial assistance and practical help in bringing up a child with disabilities?

Do all children with disabilities have effective access to, and receive without discrimination in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development
- ☐ pre-school care and education?
- ☐ education?
- ☐ training?
- ☐ health care services?
- ☐ rehabilitation services?
- ☐ recreation and play opportunities?
- ☐ cultural and artistic opportunities?
- ☐ preparation for employment?
- ☐ employment?

Are the following services provided for children with disabilities in an inclusive setting with children without disabilities
- ☐ education ?
- ☐ training?
- ☐ alternative care including institutional care?
- ☐ play and recreation?

- ☐ Are special arrangements made in the State to ensure respect for the participation rights of children with disabilities under articles 12, 13, 14 and 15?
- ☐ Do legislative and other measures ensure the equal right to life and maximum survival and development for the child with disabilities?

Are special measures taken to safeguard children with disabilities from all forms of violence and abuse,
- ☐ in the family?
- ☐ in alternative care?
- ☐ in the community?

How to use the checklist, *see page XIX*

- ☐ Has the State promoted the involvement of organizations of children with disabilities in planning, policy development and evaluation at all levels of government?
- ☐ Is the State involved in international cooperative exercises to exchange information and improve capacity and skills in relation to provision of services, etc. for children with disabilities?

Reminder: **The Convention is indivisible and its articles interdependent. Article 23 should not be considered in isolation**

Particular regard should be paid to: The other general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

All articles of the Convention should be considered with a view to equalizing the opportunities of children with disabilities to exercise their rights.

Child's right to health and health services

Text of Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution;*

(d) To ensure appropriate prenatal and postnatal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international cooperation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Summary

Article 24 of the Convention builds on and develops the right to life and to survival and development to the maximum extent possible that is set out in article 6. Applying the Convention's non-discrimination principle (article 2) requires States to recognize the right of all children without discrimination to "the highest attainable standard of health" as well as to "facilities for the treatment of illness and rehabilitation of health". And States Parties must strive to ensure "that no child is deprived of his or her right of access to such health care services".

Paragraph 2 provides a non-exhaustive list of appropriate measures that States must take in pursuing full implementation of the right, including "to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care". The holistic nature of the Convention and the Committee's interpretation stress the obvious connections between realizing the child's health rights and the child's right to an adequate standard of living (article 27) and to education (article 28) as well as to protection from all forms of physical or mental violence (article 19).

Respect for the views of the child needs to be built into health care and into the design of health services (article 12, page 168), and respect for children's evolving capacities (article 5, page 78) underlines the need for full consideration of adolescent health issues.

Article 24, paragraph 3, requires action to abolish traditional practices "prejudicial to the health of children", drafted because of particular concern over female genital mutilation and requiring a review of all potentially harmful practices. Paragraph 4 asserts the importance of international cooperation (reflecting the general provision found in article 4) in achieving full realization of the right to health and health care services.

The Convention's health provisions developed from provisions in the Universal Declaration of Human Rights and the two International Covenants – on Civil and Political Rights and on Economic, Social and Cultural Rights – and from the formulation of definitions and principles by international organizations, in particular the World Health Organization (WHO) and UNICEF. The broad definition of health adopted by WHO in its Constitution – a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity – emphasizes again the holistic nature of the Convention and links to the broad definition of child development the Convention promotes. In 2003, the Committee adopted General Comments on "Adolescent health and development in the context of the Convention on the Rights of the Child" and on "HIV/AIDS and the rights of the child". Other General Comments have implications for health rights. ■

Health rights in the International Bill of Human Rights

The Universal Declaration of Human Rights includes the right to care as part of everyone's right to "a standard of living adequate for the health and well-being of himself and of his family", adding: "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection." (Article 25)

The International Covenant on Economic, Social and Cultural Rights, in article 12, provides:

"1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness."

The Committee on Economic, Social and Cultural Rights adopted a General Comment in 2000 on the right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights) (see below). The Committee has also adopted General Comments on the right to adequate housing, the right to adequate food and the right to water; article 11 of the Covenant sets out the right of "everyone" to an adequate standard of living, including adequate food, clothing and housing (see article 27, page 393 and below, page 345).

Both the Universal Declaration and the International Covenant also assert the right to life (for further discussion see article 6, page 83).

The Convention on the Rights of the Child goes further in establishing a right of access to health care services, and providing a non-exclusive list of appropriate measures States should take.

In its General Comment on the right to the highest attainable standard of health, the Committee on Economic, Social and Cultural Rights discusses the definition of health and makes a distinction between the right to health and the right to be healthy: "In drafting article 12 of the Covenant, the Third Committee of the United Nations General Assembly did not adopt the definition of health contained in the preamble to the Constitution of the World Health Organization (WHO), which conceptualizes health as 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity'. However, the reference in article 12.1 of the Covenant to 'the highest attainable standard of physical and mental health' is not confined to the right to health care. On the contrary, the drafting history and the express wording of article 12.2 acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment." (Committee on Economic, Social and Cultural Rights, General Comment No. 14, 2000, "The right to the highest attainable standard of health [article 12 of the International Covenant on Economic, Social and Cultural Rights]", HRI/GEN/1/Rev.8, para. 4, p. 87)

"The right to health is not to be understood as a right to be *healthy*. The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

"The notion of 'the highest attainable standard of health' in article 12.1 takes into account both the individual's biological and socio-economic preconditions and a State's available resources. There are a number of aspects which cannot be addressed solely within the relationship between States and individuals; in particular, good health cannot be ensured by a State, nor can States provide protection against every possible cause of human ill health. Thus, genetic factors, individual susceptibility to ill health and the adoption of unhealthy or risky lifestyles may play an important role with respect to an individual's health. Consequently, the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health…

"The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels." (Committee on Economic, Social and Cultural Rights, General Comment No. 14, 2000, HRI/GEN/1/Rev.8, paras. 8, 9 and 11, pp. 87 and 88)

In expanding on child-related elements in its definition of "the right to health", the Committee continues: "'The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child' (art. 12(2)(a)) may be understood as requiring measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information." (HRI/GEN/1/Rev.8, para. 14, p. 90) The General Comment also refers to the health rights of adolescents (see below, page 367).

Declaration on Primary Health Care

The World Health Organization includes in its Constitution (adopted at the International Health Conference in New York in 1946) a broad definition of "health", and the same definition was used in the Declaration of Alma-Ata on Primary Health Care – the result of the 1978 International Conference on Primary Health Care, which met in Alma-Ata, (jointly sponsored by WHO and UNICEF). The Declaration of Alma-Ata defines primary health care, promoted as a priority in article 24 of the Convention on the Rights of the Child, as "essential health care based on practical, scientifically sound and socially acceptable methods and technology made universally

accessible to individuals and families in the community through their full participation and at a cost that the community and country can afford to maintain at every stage of their development in the spirit of self-reliance and self-determination. It forms an integral part both of the country's health system, of which it is the central function and main focus, and of the overall social and economic development of the community. It is the first level of contact of individuals, the family and community with the national health system bringing health care as close as possible to where people live and work, and constitutes the first element of a continuing health care process". (Declaration of Alma-Ata, paras. I and VI. For further details, see box below.)

The Declaration urges all governments to formulate national policies, strategies and plans of action to launch and sustain primary health care as part of a comprehensive national health system (Declaration of Alma-Ata 1978, paras. I, VI, VII and VIII). The Declaration was endorsed by the United Nations General Assembly in a resolution – "Health as an integral part of development" – that reiterated WHO's appeal to the international community "to give full support to the formulation and implementation of national, regional and global strategies for achieving an acceptable level of health for all" (United Nations General Assembly resolution 34/58, 29 November 1979).

More recently, in 1998, the World Health Assembly reaffirmed the Alma-Ata principles in its policy paper *Health-for-all in the twenty-first century* (Fifty-first World Health Assembly, A51/5).

The Committee on the Rights of the Child has reinforced the Convention's emphasis on primary health care in its examination of reports from States Parties.

Declaration of Alma-Ata

The following is an extract from the text of the Alma-Ata Declaration on Primary Health Care:

"Primary health care:

1. Reflects and evolves from the economic conditions and sociocultural and political characteristics of the country and its communities and is based on the application of the relevant results of social, biomedical and health services research and public health experience;
2. Addresses the main health problems of the community, providing promotive, preventive, curative and rehabilitative services accordingly;
3. Includes at least: education concerning prevailing health problems and the methods of preventing and controlling them; promotion of food supply and proper nutrition; an adequate supply of safe water and basic sanitation; maternal and child health care, including family planning; immunization against the major infectious diseases; prevention and control of locally endemic diseases; appropriate treatment of common diseases and injuries; and provision of essential drugs;
4. Involves, in addition to the health sector, all related sectors and aspects of national and community development, in particular agriculture, animal husbandry, food, industry, education, housing, public works, communications and other sectors; and demands the coordinated efforts of all those sectors;
5. Requires and promotes maximum community and individual self-reliance and participation in the planning, organization, operation and control of primary health care, making fullest use of local, national and other available resources; and to this end develops through appropriate education the ability of communities to participate;
6. Should be sustained by integrated, functional and mutually supportive referral systems, leading to the progressive improvement of comprehensive health care for all, and giving priority to those most in need;
7. Relies, at local and referral levels, on health workers, including physicians, nurses, midwives, auxiliaries and community workers as applicable, as well as traditional practitioners as needed, suitably trained socially and technically to work as a health team and to respond to the expressed health needs of the community."

(Declaration of Alma-Ata, 1978, para. VII)

A World Fit for Children: follow-up to the 1990 World Summit for Children

The World Declaration on the Survival, Protection and Development of Children and the Plan of Action for implementing it, adopted at the World Summit for Children on 30 September 1990, provided both general and specific commitments for child health, related to the Convention's standards, which the Committee on the Rights of the Child has referred to in its examination of States Parties' reports.

The United Nations General Assembly's special session on children, held in May 2002 (see box, page 348), reviewed and built on the 1990 World Summit Declaration and Plan of Action and also the outcome of the World Summit for Social Development (Copenhagen, 1995) and its 2000 follow-up, when a special session of the United Nations General Assembly reviewed progress and adopted a detailed resolution on further initiatives for social development.

The Millennium Declaration, adopted on 8 September 2000 (United Nations General Assembly resolution 55/2), provides the eight key development goals – the Millennium Development Goals – which include basic goals for child survival and development. These were reaffirmed at the 2005 World Summit (General Assembly, sixtieth session, October 2005, A/RES/60/1). The International Conference on Population and Development (Cairo, 1994), the Fourth World Conference on Women (Beijing, 1995) and its follow-ups in 2000 and 2005, include detailed recommendations on health, including particularly adolescents' health rights.

The Committee has urged States consistently to fulfil these goals (see box below).

article 24

The Millennium Development Goals

- To halve, by the year 2015, the proportion of the world's people whose income is less than one dollar a day and the proportion of people who suffer from hunger and, by the same date, to halve the proportion of people who are unable to reach or to afford safe drinking water.
- To ensure that, by the same date, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling and that girls and boys will have equal access to all levels of education.
- By the same date, to have reduced maternal mortality by three quarters, and under-five child mortality by two thirds, of their current rates.
- To have, by then, halted, and begun to reverse, the spread of HIV/AIDS, the scourge of malaria and other major diseases that afflict humanity.
- To provide special assistance to children orphaned by HIV/AIDS.
- By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers as proposed in the "Cities without Slums" initiative.
- To promote gender equality and the empowerment of women as effective ways to combat poverty, hunger and disease and to stimulate development that is truly sustainable.
- To develop and implement strategies that give young people everywhere a real chance to find decent and productive work.
- To encourage the pharmaceutical industry to make essential drugs more widely available and affordable by all who need them in developing countries.
- To develop strong partnerships with the private sector and with civil society organizations in pursuit of development and poverty eradication.
- To ensure that the benefits of new technologies, especially information and communication technologies, in conformity with recommendations contained in the ECOSOC 2000 Ministerial Declaration, are available to all.

(Resolution 55/2 adopted by the General Assembly, United Nations Millennium Declaration, A/RES/55/2, 18 September 2000. For follow-up reports, see www.un.org/millenniumgoals/documents.html.)

A World Fit for Children

United Nations General Assembly's special session on children

Extract from Plan of Action: Promoting healthy lives

"Due to poverty and lack of access to basic social services, more than 10 million children under five years of age, nearly half of them in their neonatal period, die every year of preventable diseases and malnutrition. Complications related to pregnancy and childbirth and maternal anaemia and malnutrition kill more than half a million women and adolescents each year, and injure and disable many more. More than one billion people cannot obtain safe drinking water; 150 million children under five years of age are malnourished; and more than two billion people lack access to adequate sanitation.

"We are determined to break the intergenerational cycle of malnutrition and poor health by providing a safe and healthy start in life for all children; providing access to effective, equitable, sustained and sustainable primary health care systems in all communities, ensuring access to information and referral services; providing adequate water and sanitation services; and promoting a healthy lifestyle among children and adolescents. Accordingly, we resolve to achieve the following goals in conformity with the outcomes of recent United Nations conferences, summits and special sessions of the General Assembly, as reflected in their respective reports:

(a) Reduction in the infant and under-five mortality rate by at least one third, in pursuit of the goal of reducing it by two thirds by 2015;

(b) Reduction in the maternal mortality ratio by at least one third, in pursuit of the goal of reducing it by three quarters by 2015;

(c) Reduction of child malnutrition among children under five years of age by at least one third, with special attention to children under two years of age, and reduction in the rate of low birth weight by at least one third of the current rate;

(d) Reduction in the proportion of households without access to hygienic sanitation facilities and affordable and safe drinking water by at least one third;

(e) Development and implementation of national early childhood development policies and programmes to ensure the enhancement of children's physical, social, emotional, spiritual and cognitive development;

(f) Development and implementation of national health policies and programmes for adolescents, including goals and indicators, to promote their physical and mental health;

(g) Access through the primary health care system to reproductive health for all individuals of appropriate ages as soon as possible and no later than 2015.

"To achieve these goals and targets, taking into account the best interests of the child, consistent with national laws, religious and ethical values and cultural backgrounds of its people, and in conformity with all human rights and fundamental freedoms, we will carry out the following strategies and actions:

1. Ensure that the reduction of maternal and neonatal morbidity and mortality is a health sector priority and that women, in particular adolescent expectant mothers, have ready and affordable access to essential obstetric care, well-equipped and adequately staffed maternal health care services, skilled attendance at delivery, emergency obstetric care, effective referral and transport to higher levels of care when necessary, post-partum care and family planning in order to, *inter alia*, promote safe motherhood.

2. Provide access to appropriate, user-friendly and high-quality health care services, education and information to all children.

3. Address effectively, for all individuals of appropriate age, the promotion of their healthy lives, including their reproductive and sexual health, consistent with the commitments and outcomes

of recent United Nations conferences and summits, including the World Summit for Children, the United Nations Conference on Environment and Development, the International Conference on Population and Development, the World Summit for Social Development and the Fourth World Conference on Women, their five-year reviews and reports.

4. Promote child health and survival and reduce disparities between and within developed and developing countries as quickly as possible, with particular attention to eliminating the pattern of excess and preventable mortality among girl infants and children.
5. Protect, promote and support exclusive breastfeeding of infants for six months and continued breastfeeding with safe, appropriate and adequate complementary feeding up to two years of age or beyond. Provide infant-feeding informed choices.
6. Special emphasis must be placed on prenatal and post-natal care, essential obstetric care and care for newborns, particularly for those living in areas without access to services.
7. Ensure full immunization of children under one year of age at 90 per cent nationally, with at least 80 per cent coverage in every district or equivalent administrative unit; reduce deaths due to measles by half by 2005; eliminate maternal and neonatal tetanus by 2005; and extend the benefits of new and improved vaccines and other preventive health interventions to children in all countries.
8. Certify by 2005 the global eradication of poliomyelitis.
9. Eradicate guinea worm disease.
10. Strengthen early childhood development by providing appropriate services and support to parents, including parents with disabilities, families, legal guardians and caregivers, especially during pregnancy, birth, infancy and early childhood, so as to ensure children's physical, psychological, social, spiritual and cognitive development.
11. Intensify proven, cost-effective actions against diseases and malnutrition that are the major causes of child mortality and morbidity, including reducing by one third deaths due to acute respiratory infections; reducing by one half deaths due to diarrhoea among children under the age of five; reducing by one half tuberculosis deaths and prevalence; and reducing the incidence of intestinal parasites, cholera, sexually transmitted infections, HIV/AIDS and all forms of hepatitis, and ensure that effective measures are affordable and accessible, particularly in highly marginalized areas or populations.
12. Reduce by one half the burden of disease associated with malaria and ensure that 60 per cent of all people at risk of malaria, especially children and women, sleep under insecticide-treated nets.
13. Improve the nutrition of mothers and children, including adolescents, through household food security, access to basic social services and adequate caring practices.
14. Support populations and countries suffering from severe food shortages and famine.
15. Strengthen health and education systems and expand the social security systems to increase access to integrated and effective health, nutrition and childcare in families, communities, schools and primary health care facilities, including prompt attention to marginalized boys and girls.
16. Reduce child injuries due to accidents or other causes through the development and implementation of appropriate preventive measures.
17. Ensure effective access by children with disabilities and children with special needs to integrated services, including rehabilitation and health care, and promote family-based care and appropriate support systems for parents, families, legal guardians and caregivers of these children.
18. Provide special help to children suffering from mental illnesses or psychological disorders.
19. Promote physical, mental and emotional health among children, including adolescents, through play, sports, recreation, artistic and cultural expression.

20. Develop and implement policies and programmes for children, including adolescents, aimed at preventing the use of narcotic drugs, psychotropic substances and inhalants, except for medical purposes, and at reducing the adverse consequences of their abuse as well as support preventive policies and programmes, especially against tobacco and alcohol.
21. Develop policies and programmes aimed at children, including adolescents, for the reduction of violence and suicide.
22. Achieve sustainable elimination of iodine deficiency disorders by 2005 and vitamin A deficiency by 2010; reduce by one third the prevalence of anaemia, including iron deficiency, by 2010; and accelerate progress towards reduction of other micronutrient deficiencies, through dietary diversification, food fortification and supplementation.
23. In efforts to ensure universal access to safe water and adequate sanitation facilities, pay greater attention to building family and community capacity for managing existing systems and promoting behavioural change through health and hygiene education, including in the school curriculum.
24. Address any disparities in health and access to basic social services, including health care services for indigenous children and children belonging to minorities.
25. Develop legislation, policies and programmes, as appropriate, at the national level and enhance international cooperation to prevent, *inter alia*, the exposure of children to harmful environmental contaminants in the air, water, soil and food.

("A World Fit for Children", Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, paras. 35 to 37)

The World Health Organization developed the "Strategic Directions for Improving the Health and Development of Children and Adolescents" in response to a global call for renewed and intensified action to promote and protect the health and development of the 0-19 years age group. Preparations for the United Nations General Assembly's special session on children called attention to the uneven progress that had been made in the achievement of the goals adopted in the 1990 World Summit for Children. The adoption of the development goals of the Millennium Declaration (MDGs) in 2000 provided further impetus to the need to develop a "road map for action". The Strategic Directions were endorsed unanimously during the Fifty-sixth World Health Assembly, in May 2003.

In 2005, WHO dedicated its *World Health Report* to maternal, newborn and child health. The overview states: "Each year 3.3 million babies – or maybe even more – are stillborn, more than 4 million die within 28 days of coming into the world, and a further 6.6 million young children die before their fifth birthday. Maternal deaths also continue unabated – the annual total now stands at 529,000 often sudden, unpredicted deaths which occur during pregnancy itself (some 68,000 as a consequence of unsafe abortion), during childbirth, or after the baby has been born – leaving behind devastated families, often pushed into poverty because of the cost of health care that came too late or was ineffective." The report asks: "How can it be that this situation continues when the causes of these deaths are largely avoidable? And why is it still necessary for this report to emphasize the importance of focusing on the health of mothers, newborns and children, after decades of priority status and more than 10 years after the United Nations International Conference on Population and Development put access to reproductive health care for all firmly on the agenda?" (*The World Health Report 2005 – make every mother and child count*, WHO, Geneva, 2005, p. 4)

In September 2005, the Partnership for Maternal, Newborn and Child Health was launched in support of meeting MDGs for maternal and child health (goals four and five: reducing the rate of child death by two thirds and the ratio of maternal death by three quarters by 2015, from 1990 baseline). It merges three previous partnerships: The Partnership for Safe Motherhood and Newborn Health, the Child Survival Partnership and the Healthy Newborn Partnership. It brings together over 80 members representing United Nations and multilateral agencies, partner countries,

NGOs, health professional organizations, bilateral donors and foundations and academic and research institutions (see www.pmnch.org).

Progressive implementation of health rights

As with other economic, social and cultural rights, article 4 of the Convention on the Rights of the Child requires States Parties to implement article 24 "to the maximum extent of their available resources and, where needed, within the framework of international cooperation". The right to life (article 6, para. 1) is a principle which must be respected in all circumstances, and is included in both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (see page 84). Article 24 stresses the progressive nature of implementation: States Parties "shall strive to ensure" that no child is deprived of his or her right of access to health care services, "shall pursue full implementation of this right" (para. 2), and shall promote and encourage international cooperation "with a view to achieving progressively" full realization of the right (para. 4).

The Committee on the Rights of the Child has not yet commented in detail on the interpretation of article 24 and the obligations of States Parties. But in a key General Comment on the nature of States Parties' obligations under the International Covenant on Economic, Social and Cultural Rights, the Committee on Economic, Social and Cultural Rights notes that the concept of progressive realization is, on the one hand, a necessary flexibility device, reflecting the realities of the real world. "On the other hand, the phrase must be read in the light of the overall objective, indeed the *raison d'être* of the Covenant which is to establish clear obligations for States Parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources...

"... the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State Party. Thus, for example, a State Party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant ... even where the available resources are demonstrably inadequate, the obligation remains for a State Party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. Moreover, the obligations to monitor the extent of the realization, or more especially of the non-realization, of economic, social and cultural rights, and to devise strategies and programmes for their promotion, are not in any way eliminated as a result of resource constraints." (Committee on Economic, Social and Cultural Rights, General Comment No. 3, 1990, HRI/GEN/1/Rev.8, paras. 9 to 11, pp. 17 and 18. For further discussion, see article 4, page 52.)

In its more recent General Comment on the right to the highest attainable standard of health, referred to above (page 345), the Committee on Economic, Social and Cultural Rights defines core obligations to fulfil the right to health (see box, page 352).

The Committee on the Rights of the Child frequently expresses general concern at lack of access, and lack of free access, to health services, in particular for disadvantaged groups. It has commented on low investment, shortages and high cost of drugs. For example:

"The Committee is deeply concerned at low immunization rate, high levels of malnutrition and micro-nutrition deficiencies and extremely poor health conditions among children in general and particularly in camps. Further, the Committee is concerned at high mortality rates among children, high maternal mortality rates, at low investment in health care, the limited number of hospitals and health centres that are operational, the limited drug supply and relatively high cost of medicines, including generic drugs, and the concentration of medical professionals in Bujumbura city.
"The Committee urges the State Party to make significant increases in the health budget, to make every effort to improve public health, including primary health care, and to ensure adequate access for all children to health services, with particular regard to those living in rural communities and in camps. The Committee recommends that the State Party implement integrated policies and programmes for the management of childhood illnesses and measures to improve child and maternal health. The Committee recommends that the State Party seek the assistance of UNICEF and WHO in this regard." (Burundi CRC/C/15/Add.133, paras. 54 and 55)

"The Committee commends the State Party's developed health-care system and notes with appreciation the declining rates of infant and

States' core obligations to fulfil health rights under article 12 of the International Covenant on Economic, Social and Cultural Rights

Committee on Economic, Social and Cultural Rights, General Comment No. 14, 2000: extracts

"Read in conjunction with more contemporary instruments, such as the Programme of Action of the International Conference on Population and Development, the Alma-Ata Declaration provides compelling guidance on the core obligations arising from article 12. Accordingly, in the Committee's view, these core obligations include at least the following obligations:

(a) To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;

(b) To ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone;

(c) To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;

(d) To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs;

(e) To ensure equitable distribution of all health facilities, goods and services;

(f) To adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population; the strategy and plan of action shall be devised, and periodically reviewed, on the basis of a participatory and transparent process; they shall include methods, such as right to health indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all vulnerable or marginalized groups.

"The Committee also confirms that the following are obligations of comparable priority:

(a) To ensure reproductive, maternal (pre-natal as well as post-natal) and child health care;

(b) To provide immunization against the major infectious diseases occurring in the community;

(c) To take measures to prevent, treat and control epidemic and endemic diseases;

(d) To provide education and access to information concerning the main health problems in the community, including methods of preventing and controlling them;

(e) To provide appropriate training for health personnel, including education on health and human rights.

"For the avoidance of any doubt, the Committee wishes to emphasize that it is particularly incumbent on States Parties and other actors in a position to assist, to provide "international assistance and cooperation, especially economic and technical" which enable developing countries to fulfil their core and other obligations indicated in paragraphs 43 and 44 above."

(Committee on Economic, Social and Cultural Rights, General Comment No. 14, "The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)", 2000, HRI/GEN/1/Rev.8, paras. 43 to 45, pp. 97 and 98)

under-five mortality. However, it notes with concern that:
(a) Disadvantaged families appear to lack equal access to quality health services;
(b) Regional disparities exist in the provision of health services and the national immunization programme;...

"The Committee recommends that the State Party strengthen its efforts to reform the health sector and, particularly, to build the capacity of public health sector. It recommends that appropriate resources be allocated for the public health sector and that the State Party continue to develop and implement

comprehensive policies and programmes for improving the health situation of children, so as to fully implement the Convention, in particular articles 4, 6 and 24. It also recommends that the State Party facilitate equal access to quality primary health services for mothers and children in all areas of the country in order to end the disparities in health care provision between the different areas." (Lebanon CRC/C/LBN/CO/3, paras. 52 and 53)

"Notwithstanding the various measures undertaken by the State Party to develop health care services, antenatal and post-natal care and make them accessible for free to all, the Committee remains concerned about:
(a) Regional disparities in accessibility to health services;
(b) High infant mortality rates;
(c) Infant and maternal malnutrition;
(d) The sharp decrease in breastfeeding; and
(e) Limited access to clean and safe drinking water in Rodrigues.
"The Committee recommends that the State Party:
(a) Prioritize the allocations of financial and human resources to the health sector in order to ensure equal access to quality health care by children in all areas of the country;
(b) Continue its efforts to improve prenatal care, including training programmes for midwives and traditional birth attendants, and take all necessary measures to reduce infant mortality rates, especially in rural areas;
(c) Improve the nutritional status of infants, children and mothers;
(d) Ensure access to safe drinking water and sanitation in all areas of the country and particularly in Rodrigues; and
(e) Encourage exclusive breastfeeding for at least six months after birth with the addition of an appropriate infant diet thereafter." (Mauritius CRC/C/MUS/CO/2, paras. 52 and 53)

Discrimination in access to health/health care

Article 24 stresses that the State Party must recognize the right of the child to the enjoyment of the highest attainable standard of health and it must strive to ensure that no child is deprived of access to health care services. Article 24 read with article 2 requires that no child in the jurisdiction suffers discrimination in the implementation of the article – "irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth or other status". According to the Declaration of Alma-Ata, "The existing gross inequality in the health status of the people particularly between developed and developing countries as well as within countries is politically, socially and economically unacceptable and is, therefore, of common concern to all countries." (Declaration, para. II)

The Committee has linked concerns about health to discrimination issues in many cases. In particular, it has highlighted discrimination against children living in poverty, girls, children with disabilities, children living in rural areas and different regions of a State, ethnic groups, children of indigenous communities, asylum-seeking and refugee children and illegal immigrants (see also article 2, page 19). For example:

"The Committee is concerned that the country's complex political structure and the lack of unified laws and policies make equitable access to health-care services for all children increasingly difficult… the Committee expresses serious concern that some 90 per cent of Roma have no health insurance, which results in their de facto exclusion from access to health care…
"The Committee recommends that the State Party undertake all necessary measures to ensure that all children enjoy the same access and quality of health services, with special attention to children belonging to vulnerable groups, especially Roma…" (Bosnia and Herzegovina CRC/C/15/Add.260, paras. 47 and 49)

"The Committee recommends that the State Party undertake all necessary measures to ensure that all children enjoy the same access to and quality of health services, with special attention to children belonging to vulnerable groups, especially indigenous children and children living in remote areas. In addition, the Committee recommends that the State Party take adequate measures, within a set time period, to overcome the disparity in the nutritional status between indigenous and non-indigenous children." (Australia CRC/C/15/Add.268, para. 48)

"The Committee reiterates its previous recommendations (see document CRC/C/15/Add.112, paras. 26 and 27), in particular, it recommends that the State Party implement all necessary measures to reduce the persistence of regional disparities in access to health care, the high rates of malnutrition among children under five years of age and those of school age, especially in rural and remote areas and among children belonging to indigenous groups…" (Mexico CRC/C/MEX/CO/3, para. 49)

Disability

Article 23 of the Convention on the Rights of the Child requires recognition of "the right of the disabled child to special care"; assistance provided "shall be designed to ensure that the disabled child has effective access to and receives ... health

care services, rehabilitation services ... in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development."

The new Convention on the Rights of Persons with Disabilities, adopted in December 2006, has a detailed article on health (article 25):

"States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

(a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;

(b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and the elderly;

(c) Provide these health services as close as possible to people's own communities, including in rural areas;

(d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, *inter alia*, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;

(e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;

(f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability."

In its General Comment No. 9 on "The rights of children with disabilities", the Committee notes that children with disabilities often lose out in relation to their right to health:

"Children with disabilities are often left out because of several challenges, including discrimination, inaccessibility because of the lack of information and/or financial resources, transportation, geographic distribution and physical access to health care facilities. Another factor is the absence of targeted health care programmes that address the specific needs for children with disabilities. Health policies should be comprehensive and must address early detection of disabilities, early intervention, including psychological as well as physical treatment, rehabilitation including physical aids, for example limb prosthesis, mobility devices, hearing aids, and visual aids. "It is important to emphasize, though, that health services should be provided within the same public health system that provides for children with no disabilities, free of charge, whenever possible, and be as updated and modernized as possible. The importance of community-based assistance and rehabilitation strategies should be emphasized when providing health services for children with disabilities. States Parties must ensure that health professionals working with children with disabilities are trained to the highest of standards possible and practice with a child-centred approach. In this respect, many States Parties would greatly benefit from international cooperation with international organizations as well as other States Parties." *(Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, paras. 44 and 45)*

Girls

In the report of its Day of General Discussion on "The girl child", the Committee noted that

"... The son preference, historically rooted in the patriarchal system, often manifested itself by neglect, less food and little health care. Such a situation of inferiority often favoured violence and sexual abuse within the family, as well as problems associated with early pregnancy and marriage..." *(Committee on the Rights of the Child, Report on the eighth session, January 1995, CRC/C/38, p. 49)*

The Platform for Action of the Fourth World Conference on Women states: "Existing discrimination against the girl child in her access to nutrition and physical and mental health services endangers her current and future health. An estimated 450 million adult women in developing countries are stunted as a result of childhood protein-energy malnutrition..." (para. 266) The Platform for Action proposes that all barriers be eliminated to enable girls without exception to develop their full potential and skills through equal access to education and training, "nutrition, physical and mental health care and related information" (para. 272).

In the political declaration and further action and initiatives to implement the Beijing Declaration and Platform for Action (A/RES/S-23/3) adopted at the special session of the General Assembly

(2000), there are substantial sections summarizing achievements and obstacles since 1995 (paras. 11 and 12) and making detailed recommendations for States on health services generally (para. 72) and for adolescents in particular (para. 79).

The Committee on the Elimination of Discrimination against Women adopted a General Recommendation in 1999 on women and health (relating to article 12 of the Convention on the Elimination of All Forms of Discrimination against Women). It provides detailed recommendations relating to women's health rights, including reproductive and sexual health rights and emphasizes that for the purposes of the recommendation, "'women' includes girls and adolescents". It stresses that "unequal power relationships between women and men in the home and workplace may negatively affect women's nutrition and health. They may also be exposed to different forms of violence which can affect their health. Girl children and adolescent girls are often vulnerable to sexual abuse by older men and family members, placing them at risk of physical and psychological harm and unwanted and early pregnancy. Some cultural or traditional practices such as female genital mutilation also carry a high risk of death and disability". The recommendation proposes that States should implement a "comprehensive national strategy to promote women's health throughout their lifespan". (Committee on the Elimination of Discrimination against Women, General Recommendation No. 24, 1999, HRI/GEN/1/Rev.8, pp. 331 *et seq.*)

Participation in relation to health rights

Article 12 requires that children's right to express their views and have them given due consideration, and to be heard in any judicial or administrative proceedings, is implemented in relation to health and health services. Consideration of participation is required both in relation to the overall planning, delivery and monitoring of health services relevant to the child, and also in relation to treatment of the individual child, and the child's right to consent or refuse consent to treatment (see article 12, page 168 for detailed discussion).

"States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures...": article 24(2)

The wording indicates that the list of measures in paragraph 2 is not exclusive; other measures may be required to implement the right.

In its General Comment on "Implementing child rights in early childhood", the Committee emphasizes the importance of a healthy start to life:

"States Parties should ensure that all children have access to the highest attainable standard of health care and nutrition during their early years, in order to reduce infant mortality and enable children to enjoy a healthy start in life (art. 24). In particular:
(a) States Parties have a responsibility to ensure access to clean drinking water, adequate sanitation, appropriate immunization, good nutrition and medical services, which are essential for young children's health, as is a stress-free environment. Malnutrition and disease have long-term impacts on children's physical health and development. They affect children's mental state, inhibiting learning and social participation and reducing prospects for realizing their potential. The same applies to obesity and unhealthy lifestyles;
(b) States Parties have a responsibility to implement children's right to health by encouraging education in child health and development, including about the advantages of breastfeeding, nutrition, hygiene and sanitation. Priority should also be given to the provision of appropriate pre- and post-natal health care for mothers and infants in order to foster healthy family-child relationships, especially between a child and his or her mother (or other primary caregiver) (art. 24(2)). Young children are themselves able to contribute to ensuring their personal health and encouraging healthy lifestyles among their peers, for example through participation in appropriate, child-centred health education programmes;..." *(Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 27)*

"(a) To diminish infant and child mortality"

Article 6 requires recognition that "every child has the inherent right to life"; States must ensure "to the maximum extent possible" the survival of the child (see page 83). The infant mortality rate is the probability of dying between birth and exactly one year of age, expressed per 1,000 live births; the under-five mortality rate is the probability of dying between birth and exactly five years of age, expressed per 1,000 live births.

The under-five mortality rate is chosen by UNICEF as its single most important indicator of the state of a nation's children. In 2005, under-five mortality rates varied from 282 per 1,000 live births (Sierra Leone) to 3 or 4 per 1,000 live births (Andorra, Czech Republic, Finland, Iceland, Italy, Japan, Liechtenstein, Norway, San Marino, Singapore, Slovenia and Sweden).

The rate for sub-Saharan Africa is 169, down from 188 per 1,000 in 1990; for South Asia it is 84, down from 129 per 1,000 in 1990; and for industrialized countries it is 6, down from 10 per 1,000 in 1990. The world rate is 76, down 20 per cent from 95 per 1,000 in 1990 (*The State of the World's Children 2007,* UNICEF, pp. 138 *et seq.*). While the particular goals for international commitments are to reduce infant and under-five mortality rates, the Convention is concerned with reducing mortality throughout childhood, up to 18.

The Committee on the Rights of the Child has congratulated States that have made progress in reducing rates, and has expressed grave concern wherever rates have risen and also at situations in which rates vary in a discriminatory way. For example:

"The Committee is deeply concerned at the extremely high infant mortality rates and low life expectancy in the State Party. The Committee is concerned, in particular, at the high incidence of malaria and tuberculosis and their effects upon children, at the fragile health infrastructure, limited health awareness among the public and the limited implementation of the 1993 Health Policy and the 1994 Social Policy. The Committee is deeply concerned that implementation of health policies has been slow and that only limited progress has been achieved in this area.
"The Committee urges the State Party to ensure that access to primary health care services is increased, that national health infrastructure is strengthened and that public health education programmes are used to lower infant mortality rates and raise life expectancy in the State Party. The Committee recommends that the State Party seek assistance from the World Health Organization, UNICEF and the United Nations Development Programme in this regard." *(Ethiopia CRC/C/15/Add.144, paras. 52 and 53)*

The Committee repeated its concerns when it examined Ethiopia's Third Report:

"The Committee, while noting as positive the adoption of Health Sector Development Plans, regrets the lack of information on resources assigned to health services and is concerned as medical facilities are concentrated to the urban areas, resulting in exclusion of the majority of the population to necessary health services. In particular, the Committee is deeply concerned that infant, under-five and maternal mortality rates remain very high. It is also concerned at the low coverage of vaccinations, the prevalence of malaria, low breastfeeding rates and the high incidence of malnutrition.
"The Committee recommends that the State Party take all necessary measures to strengthen its programmes for improving health care by supporting these programmes with adequate and clearly allocated resources, while paying particular and urgent attention to mortality rates, vaccination uptakes, nutrition status, breastfeeding rates and the management of communicable diseases and malaria. Specifically, the Committee recommends that the State Party pay further attention to the urban/rural divide." *(Ethiopia CRC/C/ETH/CO/3, paras. 53 and 54)*

There are diverse causes of infant and child mortality and the obligations of States to respond to these is pursued in the following subparagraphs of article 24(2), and in other articles of the Convention on the Rights of the Child – for example to provide appropriate support for parenting (article 18) and to protect children from various forms of violence, exploitation and abuse (articles 19 and 32 to 38).

"(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care"

Here again, emphasis is on "all children". The Committee's general concerns have focused on a lack of priority given to primary health care, reflecting the Declaration of Alma-Ata (see above, page 346).

"The Committee recommends that the primary health care system be improved regarding the effectiveness of, inter alia, *antenatal care, health education, including sex education, family planning and immunization programmes..."* *(Russian Federation CRC/C/15/Add.4, para. 20)*

When it examined the Russian Federation's Second Report, the Committee expressed concern at the persistence of a high infant mortality rate and the deteriorating health infrastructure and services. It recommended

"... that the State Party consider seeking technical assistance to continue its efforts to reverse the deterioration in primary health care..." *(Russian Federation CRC/C/15/Add.110, para. 46)*

Examining the Third Report, the Committee remained concerned at the standard of health:

"The Committee is also concerned that the services and programmes established under the reformed system are not fully in compliance with article 24 of the Convention, in particular with regard to the development of primary health care.
"The Committee encourages the State Party: (a) To enhance preventive interventions in primary health care;

(b) To increase public expenditure on health;
(c) To pass the law on universal salt iodization and ensure its full implementation;
(d) To continue efforts to reduce morbidity due to tuberculosis;
(e) To consider creating a national breastfeeding committee, training medical professionals and improving breastfeeding practices." *(Russsian Federation CRC/C/RUS/CO/3, paras. 52 and 53)*

"(c) To combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution"

Again, this subparagraph emphasizes the framework of primary health care; the Committee's comments have highlighted the basic issues of nutrition and clean water and the dangers of environmental pollution. Discrimination in provision and access to primary health care is often mentioned, particularly affecting children in rural areas and children living in poverty.

Nutrition. Nutrition is also mentioned in subparagraph (e) of article 24(2): States should ensure dissemination of basic knowledge of nutrition, particularly to parents and children. Article 27 of the Convention (adequate standard of living) requires States Parties in cases of need to provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing (see also article 27, page 393).

In the 1969 Declaration on Social Progress and Development, the "elimination of hunger and malnutrition and the guarantee of the right to proper nutrition" (article 10(b)) are listed as among the "main goals". The Universal Declaration of Human Rights states that "everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services..." (article 25), and the International Covenant on Economic, Social and Cultural Rights similarly recognizes the right of everyone to an adequate standard of living... "including adequate food" and the fundamental right of everyone to be free of hunger (article 11(1)).

The International Conference on Nutrition (Rome, December 1992) prepared the World Declaration and Plan of Action for Nutrition, which recognizes that "access to nutritionally adequate and safe food is a right of each individual". The Declaration also affirmed "in the context of international humanitarian law that food must not be used as a tool for political pressure. Food aid must not be denied because of political affiliation, geographic location, gender, age, ethnic, tribal or religious identity." (Declaration, paras. 1 and 15)

In 1999 the Committee on Economic, Social and Cultural Rights issued a General Comment on the right to adequate food – "of crucial importance for the enjoyment of all rights". "Fundamentally, the roots of the problem of hunger and malnutrition are not lack of food but lack of access to available food, *inter alia* because of poverty, by large segments of the world's population." The "core content" of the right to adequate food implies "the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture". Accessibility must be "in ways that are sustainable and that do not interfere with the enjoyment of other human rights". The Committee defines the right to adequate food as being realized when "every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients. The right to adequate food will have to be realized progressively. However, States have a core obligation to take the necessary action to mitigate and alleviate hunger… even in times of natural or other disasters."

The General Comment also notes that "Any person or group who is a victim of a violation of the right to adequate food should have access to effective juridical or other appropriate remedies at both national and international levels. All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition, National Ombudsmen and human rights commissions should address violations of the right to food." (Committee on Economic, Social and Cultural Rights, General Comment No. 12, 1999, HRI/GEN/1/Rev.8, pp. 65 *et seq.*)

The Committee on the Rights of the Child often expresses concern at malnutrition and emphasizes the need for a multisectoral approach to ending it.

The Committee has also noted obesity and the eating disorders anorexia nervosa and bulimia as a threat to children's health:

"... The Committee notes with concern the increasingly poor nutrition practices and food choices, including within the school lunch programme, as well as the high incidence of overweight and obesity among children, especially those living in urban areas...
"The Committee recommends that the State Party take all appropriate measures to promote and encourage healthy nutritional practices to prevent and address overweight and obesity among children." (Palau CRC/C/15/Add.149, paras. 46 and 47)

"The Committee is concerned at the high incidence of anorexia nervosa and bulimia and by the prevalence of alcohol consumption among adolescents...
"The Committee encourages the State arty to continue its efforts to address cases of anorexia nervosa and bulimia which are both medical and psychological problems." (Norway CRC/C/15/Add.126, paras. 36 and 37)

It followed these concerns up when it examined Norway's Third Report:

"The Committee remains concerned about the high incidence of eating disorders (bulimia and anorexia nervosa). Furthermore, the Committee is concerned about the growing problems of overweight among children that results from low physical activity combined with poor diet.
"The Committee recommends that the State Party pay close attention to child and adolescent health, taking into account the Committee's General Comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child. In particular, the Committee recommends that the State Party strengthen measures to address the occurrence of eating disorders and promote a healthy lifestyle among adolescents." (Norway CRC/C/15/Add.263, paras. 31 and 32)

Clean drinking water. In 2002, the Committee on Economic, Social and Cultural Rights adopted a General Comment on the right to water, referring to articles 11 and 12 of the International Covenant for Economic, Social and Cultural Rights: "The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights." The elements of the right to water must be adequate for human dignity, life and health: "The adequacy of water should not be interpreted narrowly, by mere references to volumetric quantities and technologies. Water should be treated as a social and cultural good and not primarily as an economic good. The manner of the realization of the right to water must also be sustainable, ensuring that the right can be realized for present and future generations." The Committee goes on to emphasize availability, quality and physical and economic accessibility, non-discrimination and accessibility of information on water issues. States should take steps to ensure in particular that "Children are not prevented from enjoying their human rights due to the lack of adequate water in educational institutions and households or through the burden of collecting water. Provision of adequate water to educational institutions currently without adequate drinking water should be addressed as a matter of urgency." (Committee on Economic, Social and Cultural Rights, General Comment No. 15, 2002, HRI/GEN/1/Rev.8, see in particular paras. 1, 10 to 12, and 16(b), pp. 105 *et seq.*) The Committee sets out States' core obligations in para. 37.

Environmental pollution. The Committee on the Rights of the Child has highlighted the damaging effects on the realization of children's rights of environmental pollution, both in general and from specific incidents. It has mentioned contamination of water supplies, sea pollution, and air pollution. For example:

"The Committee is concerned, despite the legislative and other measures taken by the State Party, about environmental problems, such as air and water pollution and environmental degradation which have serious consequences for children's health and development. As regards access to safe drinking water and sanitation, the Committee is concerned about the regional disparities. Furthermore, poor knowledge of hygienic practices both among children and their parents give cause for concern.
"The Committee recommends that the State Party:
(a) Continue to strengthen its efforts to reduce pollution and environmental degradation by strengthening the implementation of domestic environmental laws, including Ecological Solid Waste Management Act (Republic Act No. 9003) and the Clean Air Act (Republic Act No. 8749);
(b) Increase children's knowledge of environmental health issues by introducing environmental health education programmes in schools;
(c) Take effective measures to improve access to safe drinking water and sanitation facilities, particularly in the remote areas of the country, as well as raise awareness on hygiene among children and their parents." (Philippines CRC/C/15/Add.259, paras. 60 and 61)

"The Committee expresses its concern at the high incidence of environmental threats, including to the health of children, in particular in oil exploitation areas of the Amazonia region. In the light of

article 24(2)(c) of the Convention, the Committee recommends that the State Party take all appropriate measures, including seeking international cooperation, to prevent and combat the damaging effects of environmental degradation, including pollution, on children."
(Ecuador CRC/C/15/Add.93, para. 24)

It reiterated this concern when it examined Ecuador's combined Second and Third Reports:

"The Committee recommends that the State Party effectively address the problem of pollution and environmental degradation, including by seeking bilateral agreements and international cooperation. It also recommends that the State Party strengthen its environmental health education programme."
(Ecuador CRC/C/15/Add.262, para. 54)

"(d) to ensure appropriate prenatal and postnatal health care for mothers"

The 1990 World Summit for Children Plan of Action notes: "... The causes of the high rates of infant mortality, especially neonatal mortality, are linked to untimely pregnancies, low birth weight and pre-term births, unsafe delivery, neonatal tetanus, high fertility rates, etc..." (Para. 16) Almost a fifth of under-five deaths are due to perinatal causes.

The outcome document of the United Nations General Assembly's special session on children commits States to:

"Ensure that the reduction of maternal and neonatal morbidity and mortality is a health sector priority and that women, in particular adolescent expectant mothers, have ready and affordable access to essential obstetric care, well-equipped and adequately staffed maternal health-care services, skilled attendance at delivery, emergency obstetric care, effective referral and transport to higher levels of care when necessary, post-partum care and family planning in order to, *inter alia*, promote safe motherhood." The Plan of Action suggests that "special emphasis must be placed on prenatal and post-natal care, essential obstetric care and care for newborns, particularly for those living in areas without access to services" (para. 37(1) and (6)).

As noted above (page 350), the new global Partnership for Maternal, Newborn and Child Health, launched in 2005, emphasizes the importance of focusing together on maternal and child health. The continuum of care approach promotes care for mothers and children from pregnancy to delivery, in the immediate postnatal period and on into childhood, recognizing that safe childbirth is critical to the health of both the mother and the newborn child.

The Committee has emphasized the importance of training for everyone involved in supporting birth, including traditional birth attendants. It has noted the particular threats to mortality rates and health early motherhood poses (see further discussion under article 24(2)(f) below – family planning education and services).

"(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents"

This paragraph of article 24 underlines the key importance of health education and information, and support, to achieving the child's right to health and access to health care services, an idea echoed in the World Summit Declaration and Plan of Action, and the Platform for Action of the Fourth World Conference on Women. The link between health and access to basic education and achievement of literacy is acknowledged and reflected in goals in these and other plans. Article 17 of the Convention on the Rights of the Child promotes the potential role of the mass media in disseminating information of benefit to children (see article 17, page 219). Article 18 requires States to render appropriate assistance to parents in the performance of their child-rearing responsibilities, and the Committee on the Rights of the Child has frequently called for parenting and family education (see also article 18, page 235).

Breastfeeding. There are two aspects to the promotion of breastfeeding: the need for positive information, education and promotion of its advantages, and the need to challenge the negative impact of the commercial marketing of substitutes. A widely used standard for positive education is the 1989 WHO/UNICEF *Ten steps to successful breastfeeding*. These steps form the backbone of the worldwide Baby-Friendly Hospital Initiative, launched in 1991 by WHO and UNICEF.

In 1981 the International Code of Marketing of Breastmilk Substitutes was adopted by the World Health Assembly (WHA Resolution 34.22, 1981). The Code aims "to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breastfeeding, and by ensuring the proper use of breastmilk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution" (Code, para. 1).

In 1990, the Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding included national action to implement the Code as one of its four operational targets for 1995. The World Health Assembly (WHA) has repeatedly reiterated its recommendation to Member States to adopt the Code and subsequent WHA resolutions in their entirety. The Code specifies that Member States "shall communicate annually to the Director-General information on action taken to give effect to the principles and aim of the Code". The Director-General of WHO is required to report to the World Health Assembly in even years on the status of implementation of the Code, and to provide technical support on request to Member States (paras. 11.6 and 11.7).

The Global Strategy for Infant and Young Child Feeding, endorsed in 2002 by both the Fifty-fifth World Health Assembly (WHA55/2002/REC/1, Annex 2) and the UNICEF Executive Board, provides a framework for action to protect, promote, and support appropriate infant and young child feeding. The Global Strategy defines responsibilities for all concerned parties: to enable mothers and families to exclusively breastfeed their infants for six months, to introduce adequate complementary foods after six months with continued breastfeeding, and to implement the best feeding option for special circumstances, such as with low birth weight babies, infants of mothers living with HIV, and families living in emergency situations. The Global Strategy also recognizes the intricate links between maternal nutrition and child health outcomes, and promotes effective interventions to improve maternal nutritional status.

A follow-up Innocenti Declaration 2005 on Infant and Young Child Feeding acknowledges remarkable progress in 15 years – but states that "inappropriate feeding practices – sub-optimal or no breastfeeding and inadequate complementary feeding – remain the greatest threat to child health and survival globally. Improved breastfeeding alone could save the lives of more than 3,500 children every day, more than any other preventive intervention". The 2005 Innocenti Declaration notes that the 1990 Declaration and the 2002 Global Strategy remain the foundation for action. It provides a detailed call for action, stating that the actions are urgent "for the best start in life for our children, for the achievement of the Millennium Development Goals and for the realization of the human rights of present and future generations".

The International Baby Food Action Network (IBFAN) consists of public interest groups working around the world to reduce infant and young child morbidity and mortality. IBFAN aims to improve the health and well-being of babies and young children, their mothers and their families through the protection, promotion and support of breastfeeding and optimal infant feeding practices. IBFAN works for universal and full implementation of the International Code and WHO Resolutions (see www.ibfan.org).

The Committee has recognized that implementation of the Code by States Parties is a concrete measure towards the realization of parents' right to objective information on the advantages of breastfeeding and, thus, to fulfilling the obligations of article 24. It consistently encourages compliance with the Code. For example:

"The Committee recommends that the ban of the commercial marketing of infant formula be implemented and that breastfeeding be promoted among mothers in health facilities..." *(Lebanon CRC/C/15/Add.54, para. 34)*

When it examined Lebanon's Second Report, the Committee

"... notes the difficulties acknowledged by the State Party in enforcing a law prohibiting the free distribution of milk substitutes and notes that the commercial marketing of infant formula is still widespread...
"The Committee recommends that the State Party: ... Strengthen its efforts to promote breastfeeding..." *(Lebanon CRC/C/15/Add.169, paras. 44 and 45)*

And following examination of the Third Report, it found:

"... Despite improvements, the rate of exclusive breastfeeding is still relatively low; ...
"The Committee further recommends that the State Party: ... Encourage exclusive breastfeeding for six months after birth, with the addition of an appropriate infant diet thereafter, and take measures to improve the nutritional status of children through education and the promotion of healthy feeding practices;..." *(Lebanon CRC/C/LBN/CO/3, paras. 52 and 53)*

Mother-to-child transmission of HIV is another concern of the Committee. In 2000, WHO, on behalf of the Inter-Agency Task Team on prevention of mother-to-child transmission of HIV, convened a technical consultation which included discussions on HIV and infant feeding. Based on the recommendations from the consultation, revised and new guidance was developed, including the *HIV and Infant Feeding: Framework for Priority Action* (endorsed by all key United Nations agencies), a review of transmission of HIV through breastfeeding, guidelines for decision makers, as well as a guide for health-care

managers and supervisors, an operations research manual, tools for health workers and counselling training manuals. This guidance has been widely disseminated. A technical consultation in 2006 refined the guidance which continues to reflect a broad consensus on a public health approach based on universally recognized human rights standards.

In its General Comment No. 3 on "HIV/AIDS and the rights of the child" (see below, page 364), the Committee requests States to ensure implementation of the strategies recommended by the United Nations agencies to prevent HIV infection in infants and young children. These include: (a) the primary prevention of HIV infection among parents-to-be; (b) the prevention of unintended pregnancies in HIV-infected women, (c) the prevention of HIV transmission from HIV-infected women to their infants; and (d) the provision of care, treatment and support to HIV-infected women, their infants and families. To prevent mother-to-child transmission of HIV, States Parties must take steps, including the provision of essential drugs, e.g., antiretroviral drugs, appropriate antenatal, delivery and post-partum care, and making voluntary counselling and testing services available to pregnant women and their partners.

States should provide support, including counselling on infant feeding options:

"Even in populations with high HIV prevalence, the majority of infants are born to women who are not HIV-infected. For the infants of HIV-negative women and women who do not know their HIV status, the Committee wishes to emphasize, consistent with articles 6 and 24 of the Convention, that breastfeeding remains the best feeding choice. For the infants of HIV-positive mothers, available evidence indicates that breastfeeding can add to the risk of HIV transmission by 10 to 20 per cent, but that lack of breastfeeding can expose children to an increased risk of malnutrition or infectious diseases other than HIV. United Nations agencies have recommended that, where replacement feeding is affordable, feasible, acceptable, sustainable and safe, avoidance of all breastfeeding by HIV-infected mothers is recommended; otherwise, exclusive breastfeeding is recommended during the first months of life and should then be discontinued as soon as it is feasible." *(Committee on the Rights of the Child, General Comment No. 3, 2003, CRC/GC/2003/3, para. 27)*

Accident prevention. Few reports from States have given much information on accident prevention, and there has been little comment from the Committee. Under article 3(2), States undertake to provide the protection and care necessary for children's welfare. While accident prevention is clearly part of parental responsibilities, there are aspects of it which can only be promoted adequately through state action (transport and environmental policies, provision of appropriate advice, financial support for domestic safety aids and so forth). Accidents are a major cause of child death and injury in many States.

In 2005, the World Health Organization and UNICEF issued *Child and adolescent injury prevention: a global call to action*. WHO and UNICEF are stepping up their work in the area of child and adolescent injury prevention. A world report and 5-10 year global strategy for child and adolescent injury prevention will form part of this effort. The report will provide a global picture of the patterns of child and adolescent injury, as well as recommendations and good practice for countries to adopt and follow. The "call to action" notes that every year, millions of children all over the world die from preventable causes. Injuries and violence are an important contributor. WHO estimates that, in 2002, around 875,000 children under the age of 18 years died as the result of an injury, although recent community-based studies conducted by UNICEF suggest that this number could be much higher. This places injuries among the leading causes of death in children who survive beyond their first birthday.

In addition to the high death toll, injuries during childhood and adolescence are also associated with high morbidity: for every injured child who dies, several thousand more survive with varying degrees of disability. The impact of these injuries on society is tremendous: every day, thousands of families are robbed of their children and thousands of children have to learn to cope with the consequences of their injury, which, in some cases, can be both long-lasting and profound.

Worldwide, road traffic accidents and drowning are the most common causes of injury deaths among children, followed by burns and falls. Deliberate violence also takes a substantial toll. Children from poor families are disproportionately affected by injuries. More than 95 per cent of all unintentional childhood injury deaths occur in low- and middle-income countries. Within the high-income countries there is also a strong socioeconomic gradient of child and adolescent injury, with children from poor families being considerably more likely to sustain an injury than their more affluent counterparts.

The call to action emphasizes: "Child injuries are not necessarily purely 'accidental' or random events; to a degree they are predictable and therefore largely preventable. As a public health

problem, injuries cannot, and indeed must not, be neglected any longer. Now is the time to challenge the notion that injuries are unavoidable and make room for a pro-active, preventive approach to reducing injury mortality worldwide. ... The United Nations resolved in 2000 to reduce the nearly 11 million deaths among the under-fives by two thirds by 2015 (Millennium Development Goal 4). Reducing injury and violence, a leading cause of death in children after their first birth year, will be an important contribution to achieving this goal."

The challenge of HIV/AIDS

A global summary of the state of the AIDS epidemic – UNAIDS/WHO, *AIDS Epidemic Update: December 2006* – estimates that 2.3 million children aged 0-15 years are living with AIDS (between 1.7 million and 3.5 million); 530,000 were newly infected (between 410,000 and 660,000); and 380,000 died of AIDS (between 290,000 and 500,000). The grave threat which HIV/AIDS poses to the realization of children's rights has been highlighted by the Committee, which held a Day of General Discussion in 1998 on "Children living in a world with AIDS" (CRC/C/80). Following the General Discussion, it formulated detailed recommendations and, in 2003, it issued its General Comment No. 3 on "HIV/AIDS and the rights of the child" (for summary, see box on page 364, and for full text see www.ohchr.org/english/bodies/crc/comments.htm).

The Joint United Nations Programme on HIV/AIDS (UNAIDS), established in 1996, is a co-sponsored programme that brings together 10 agencies: UNHCR, UNICEF, WFP, UNDP, UNFPA, UNODC, ILO, UNESCO, WHO and the World Bank. It develops the priorities to be pursued in country programmes. In June 2001 a special session of the United Nations General Assembly was convened to review and address the problem of HIV/AIDS in all its aspects as well as to secure a global commitment to enhancing coordination and intensification of national, regional and international efforts to combat it in a comprehensive manner (see United Nations General Assembly resolution S-26/2 of 27 June 2001).

The Committee devotes significant and increased attention to HIV/AIDS in its examination of reports, with a separate section under "Basic health and welfare" in Concluding Observations. For example:

"While welcoming the establishment of the National AIDS Council, chaired by the president, the National AIDS Coordinating Council, the National Policy on HIV/AIDS, the Prevention of Mother-to-Child Transmission Programme and the programme for AIDS orphans, the Committee shares the serious concern of the State Party at the still exceedingly high prevalence rate of HIV/AIDS, especially among women in their child-bearing years compounded, in part, by inappropriate traditional practices, stigmatization and lack of knowledge on prevention methods.
"In the light of General Comment No. 3 on HIV/AIDS and the rights of the child (CRC/GC/2003/3), the Committee urges the State Party to strengthen its efforts in combating the spread and effects of HIV/AIDS by, inter alia, *training professionals, conducting education campaigns on prevention, improving the prevention of mother-to-child transmission programme, by providing free and universal antiretroviral medication and improving protection and support for AIDS orphans."* *(Botswana CRC/C/15/Add.242, paras. 50 and 51)*

The Committee also urged Botswana to allocate more resources to ensure implementation of the economic, social and cultural rights of children, in particular those belonging to economically disadvantaged groups, including children and families infected and/or affected by HIV/AIDS:

"… the Committee also recommends that the State Party ensure that regional and other free trade agreements do not have a negative impact on the implementation of children's rights and, more specifically, that these will not affect the possibility of providing children and other victims of HIV/AIDS with effective medicines for free or at the lowest price possible." *(Botswana CRC/C/15/Add.242, para. 20)*

"While welcoming the launch of the National Anti-Aids Programme (2005-2008) and the adoption of Decree No. 2002/360 of 30 November 2002 establishing the National Anti-AIDS Council, the Committee remains concerned at the fact that only few HIV-positive children have access to antiretroviral drugs. The Committee is also concerned at the lack of comprehensive data and policy on paediatric HIV/AIDS and at the high level of mother-to-child transmission of HIV/AIDS.
"The Committee is further concerned at the fact that prevention is not sufficiently enforced among children and adolescents through their acquisition of the needed knowledge, and adoption of low-risk behaviours.
"The Committee recommends that the State Party:
(a) Provide antiretroviral treatment to HIV-positive children and expand the coverage of voluntary HIV tests for pregnant women;
(b) Strengthen its measures to expand facilities and medical training for the diagnosis and treatment of HIV/AIDS;
(c) Strengthen its efforts by conducting campaigns and programmes to raise awareness about HIV/AIDS among adolescents,

particularly among those belonging to vulnerable and high-risk groups as well as the population at large, so as to reduce discrimination against children infected and affected by HIV/AIDS;
(d) Adequately implement the National Anti-Aids Programme (2005-2008), including by providing it with the necessary funding; and
(e) Seek further technical assistance from, inter alia, *the United Nations Joint Programme on HIV/AIDS and UNICEF.*
"In this respect, the Committee wishes to draw the attention of the State Party to its General Comment No. 3 (2003) on HIV/AIDS and the rights of the child, and on the International Guidelines on HIV/AIDS and Human Rights (E/CN.4/1997/37)."
(Republic of the Congo CRC/C/COG/CO/1, paras. 60 to 63)

"(f) To develop preventive health care, guidance for parents, and family planning education and services"

Programmes of preventive health care, health promotion and guidance exist in all countries and are promoted by WHO, UNICEF and other agencies.

The Committee has promoted education for parenthood, including education on health matters. Article 18 requires States to render "appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities" and to ensure "the development of institutions, facilities and services for the care of children" (see article 18, page 231).

Immunization. Immunization is one particular aspect of preventive health care. The Committee on the Rights of the Child has expressed grave concern where immunization rates have fallen and has congratulated States that have achieved significant increases in their rates. Here again, discrimination is an issue.

In 2000 a new Global Alliance for Vaccines and Immunization (GAVI), the GAVI Alliance, was launched (www.gavialliance.org). By 2006, it reported that the GAVI Alliance resources had enabled the poorest countries to introduce new vaccines (hepatitis B, Hib, and yellow fever) and increased access to basic childhood vaccines (including polio, diphtheria, tetanus, pertussis, and measles). Approximately 138 million additional children had been protected with new vaccines and approximately 28 million additional children had been protected with basic vaccines (WHO Department of Immunization, Vaccines and Biologicals projection for year 2006, November 2006).

Family planning education and services. Some States Parties made declarations or reservations with reference to subparagraph (f) of article 24. For example, "... the Argentine Republic considers that questions relating to family planning are the exclusive concern of parents in accordance with ethical and moral principles and understands it to be a State obligation, under this article, to adopt measures providing guidance for parents and education for responsible parenthood." The Holy See's reservation states "that it interprets the phrase 'family planning education and services' in article 24(2) to mean only those methods of family planning which it considers morally acceptable, that is, the natural methods of family planning". And Poland's reservation states "With respect to article 24, paragraph 2(f), of the Convention, the Republic of Poland considers that family planning and education services for parents should be in keeping with the principles of morality." (CRC/C/2/Rev.8, pp. 13, 23 and 36) In each case, the Committee seeks withdrawal of the declarations or reservations (see article 1, page 2 for further discussion).

The Committee's General Comments, on "HIV/AIDS and the rights of the child" (see above, page 364) and on "Adolescent health and development in the context of the Convention on the Rights of the Child" (see below, page 368) emphasize adolescents' rights to accurate, uncensored information on sexuality and to access to appropriate services. The Committee has frequently expressed concern at high rates of teenage pregnancy, and has proposed health education and family planning programmes.

Family planning is of importance not only to prevent early or unwanted pregnancy but also to space and limit numbers of children, to enable mothers to meet the needs of existing children and to protect maternal health. Family planning issues should be of equal concern to boys and young men as to girls and young women.

The Report of the International Conference on Population and Development (Cairo, 1994) proposed as a Principle that "Reproductive health care should provide the widest range of services without any form of coercion..." (A/CONF.171/13, Principle 8) Special emphasis should be placed on men's shared responsibility and active involvement in sexual and reproductive behaviour, including family planning, prenatal, maternal and child health, prevention of sexually transmitted diseases, including HIV and prevention of unwanted and high-risk pregnancies (A/CONF.171/13, paras. 4.26 and 4.27).

HIV/AIDS and the rights of the child

Committee on the Rights of the Child, General Comment No. 3, 2003: summary

"The HIV/AIDS epidemic has drastically changed the world in which children live. Millions of children have been infected and have died and many more are gravely affected as HIV spreads through their families and communities". Bringing the impact of HIV/AIDS on children under control requires concerted and well-targeted efforts from all countries at all stages of development. The issue of children and HIV/AIDS has been perceived as mainly a medical or health problem, but it impacts so heavily that it affects all children's rights – civil, political, economic, social and cultural. The Convention, and in particular the four general principles, provides a powerful framework for action.

Discrimination: The Committee interprets "other status", in the list of grounds for discrimination under article 2, as including the HIV/AIDS status of children or their parents. Discrimination, particularly that based on gender and sexual orientation, is responsible for heightening the vulnerability of children to HIV/AIDS. Discrimination denies children access to information, education, health or social care services or community life.

Best interests: HIV/AIDS policies are generally designed for adults with scarce attention to the principle of the best interests of the child as a primary consideration. The child's rights and needs should be placed at the centre of the State's response to the pandemic.

Right to life and maximum survival and development: Children have the right to benefit from economic and social policies that allow them to survive and develop. Effective prevention programmes acknowledge the realities of the lives of adolescents, and the State should give careful attention to children's behaviours and lifestyles, including sexuality, even if these do not conform to prevailing cultural norms.

Right to participate: Interventions have been found to be most effective when children are actively involved in assessing needs, devising solutions and carrying them out, rather than being seen as objects for whom decisions are made.

Obstacles: "Denying that a problem exists, cultural practices and attitudes, including taboos and stigmatization, poverty and patronizing attitudes towards children are just some of the obstacles that may block the political and individual commitment needed for effective programmes". Resource constraints should not be used by States to justify a failure to take necessary measures.

Right to information: Children have the right to adequate, appropriate and timely information related to HIV/AIDS prevention and care, through formal educational and media channels as well as informal channels (e.g., those targeting street children or institutionalized children). Effective prevention requires States to refrain from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information. Education plays a critical role in providing children with appropriate information, empowering children to protect themselves from infection, and preventing negative attitudes.

Child- and adolescent-sensitive health services: Children are more likely to use services that are friendly, supportive, geared to their needs, allow them to participate in decisions affecting their health, are accessible, affordable, confidential, non-judgemental, do not require parental consent and are not discriminatory.

HIV counselling and testing: States should ensure access to voluntary, confidential HIV counselling and testing for all children and prevent any form of mandatory testing. The evolving capacities of the child will determine whether consent is required directly from the child or from his or her parent or guardian; in either case, there must be adequate information to ensure an informed decision. States must protect the confidentiality of HIV test results, in line with the right to privacy under article 16; information on HIV status may not be disclosed to third Parties, including parents, without the child's consent.

Mother-to-child transmission: Infants and young children can be infected with HIV during pregnancy, labour and delivery, and through breastfeeding. States are requested to implement strategies recommended by the United Nations agencies, including the provision of essential drugs, e.g., antiretroviral drugs, appropriate antenatal, delivery and post-partum care, and making voluntary counselling and testing services available to pregnant women and their partners. Counselling of HIV-positive mothers should include information about the risks and benefits of different infant feeding options.

Access to treatment: States must ensure that children have sustained and non-discriminatory access to comprehensive treatment and care, including necessary HIV-related drugs, goods and services. States should negotiate with the pharmaceutical industry to make the necessary medicines locally available at the lowest costs possible.

Involvement of children in research: States must ensure that HIV/AIDS research programmes include studies that contribute to effective prevention, care and treatment for children. Children must not serve as research subjects until an intervention has been thoroughly tested on adults and proper consent has been obtained from child and/or parents based on full disclosure of the risks and benefits to the child.

Children needing special attention: The Committee highlights the acute vulnerability to HIV/AIDS of children living in refugee camps, detention and institutions, as well as children in situations of extreme poverty or armed conflict, economically and sexually exploited children, and disabled, migrant, minority, indigenous, and street children. Reducing vulnerability requires first and foremost that children, their families and communities be empowered to make informed choices.

Children affected and orphaned by HIV/AIDS: Special attention must be given to these children. Birth registration and proof of identity are often critical to securing rights. States must ensure that both law and practice support the inheritance and property rights of orphans, with particular attention to gender-based discrimination. Efforts should be made to enable siblings to remain together and in the care of relatives or family members. The extended family, with the support of the surrounding community, may be the least traumatic and therefore best way to care for orphans. When not available, States should provide family-type alternative care. Child-headed households should, when necessary, be supported. Institutionalized care for children should be a measure of last resort.

Vulnerability to sexual and economic exploitation: States must take bold action to protect children affected by HIV/AIDS from sexual and economic exploitation, trafficking and sale. States must also protect children from all forms of violence: abuse may increase the risk of children becoming HIV-infected, and they may be subjected to violence as a result of being infected or affected by HIV/AIDS. The relationship between HIV/AIDS and the abuse suffered by children in the context of armed conflict requires specific attention.

Substance abuse: The use of substances, including alcohol and drugs, may reduce the ability of children to control their sexual conduct and thus increase their vulnerability to infection. Injecting practices using unsterilized instruments further increase this risk. States must address the factors that expose children to substance abuse as well as providing treatment and support to children who are abusing substances.

Recommendations: The Committee reaffirms the recommendations which emerged at its Day of General Discussion on "Children living in a world with AIDS" (CRC/C/80). The General Comment also calls on States:

(a) To adopt and implement national and local HIV/AIDS-related effective strategies and programmes that are child-centred and based on the rights of the child, taking into account the recommendations of this General Comment and those adopted at the United Nations General Assembly's special session on children (2002);

(b) To allocate financial, technical and human resources, to the maximum extent possible, to support national and community-based action, where appropriate with international cooperation;

(c) To review existing laws or enact new anti-discrimination legislation, and in particular to expressly prohibit discrimination based on real or perceived HIV/AIDS status;

(d) To include HIV/AIDS strategies in the work of national mechanisms responsible for monitoring and coordinating children's rights and to consider the establishment of a review procedure which responds specifically to complaints on violations of the rights of the child in relation to HIV/AIDS;

(e) To reassess the State's HIV-related data collection and evaluation to ensure that they adequately cover children, are disaggregated by gender and age, ideally in five-year age groups, and include, as far as possible, children in need of special protection;

(f) To include, in their reports under the Convention, information on national HIV/AIDS policies and programmes and the extent to which these explicitly recognize children and their rights; also to outline their planned programme of activities for the next five years.

The Committee calls on relevant United Nations agencies and other relevant international bodies to contribute systematically on this issue at the national level and also to continue to work with the Committee. States providing development cooperation are urged to ensure that HIV/AIDS strategies are designed to take fully into account children's rights. States should enable participation by the full range of civil society groups including of people living with HIV/AIDS, with particular attention to children, in the provision of HIV/AIDS services.

(Committee on the Rights of the Child, General Comment No. 3, "HIV/AIDS and the rights of the child", 2003, CRC/GC/2003/3. For full text see www.ohchr.org/english/bodies/crc/comments.htm.)

The Report also stressed that youth should be actively involved in the planning, implementation and evaluation of programmes: "This is especially important with respect to information, education and communication activities and services concerning reproductive and sexual health, including the prevention of early pregnancies, sex education and the prevention of HIV/AIDS and other sexually transmitted diseases. Access to, as well as confidentiality and privacy of, these services must be ensured with the support and guidance of their parents and in line with the Convention on the Rights of the Child. In addition, there is a need for educational programmes in favour of life planning skills, healthy lifestyles and the active discouragement of substance abuse" (para. 6.15).

The Report urged support for "integral sexual education and services for young people, with the support and guidance of their parents and in line with the Convention on the Rights of the Child, that stress responsibility of males for their own sexual health and fertility and that help them exercise those responsibilities..."

One of the agreed objectives of the Cairo Conference was to substantially reduce all adolescent pregnancies (A/CONF.171/13, paras. 7.37 and 7.45).

The Platform for Action of the Fourth World Conference on Women states: "More than 15 million girls aged 15 to 19 give birth each year. Motherhood at a very young age entails complications during pregnancy and delivery and a risk of maternal death that is much greater than average. The children of young mothers have higher levels of morbidity and mortality. Early child-bearing continues to be an impediment to improvements in the educational, economic and social status of women in all parts of the world..." In addition: "Sexual violence and sexually transmitted diseases, including HIV/AIDS, have a devastating effect on children's health, and girls are more vulnerable than boys to the consequences of unprotected and premature sexual relations..." (Platform for Action, paras. 268 and 269)

The United Nations General Assembly's special session follow-up to Beijing (2000) has similar detailed proposals for development of services for adolescents. It suggests that governments should "Design and implement programmes with the full involvement of adolescents, as appropriate, to provide them with education, information and appropriate, specific, user-friendly and accessible services, without discrimination, to address effectively their reproductive and sexual health needs, taking into account their right to privacy, confidentiality, respect and informed consent, and the responsibilities, rights and duties of parents and legal guardians to provide in a manner consistent with the evolving capacities of the child appropriate direction and guidance in the exercise by the child of the rights recognized in the Convention

on the Rights of the Child…" (A/RES/S-23/3, para. 79(f))

Adolescent health services. Responding to the recommendations of the various global conferences and United Nations agencies, the Committee has placed an increasing emphasis on development of appropriate health services for adolescents. In 2003 it adopted its General Comment No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child" (see box for summary, page 368 and full text at www.ohchr.org/english/bodies/crc/comments.htm).

In its examination of States Parties' reports, the Committee almost invariably comments in detail on adolescent health issues. While reproductive and sexual health and the dangers of HIV/AIDS and sexually transmitted diseases is the overwhelming focus, the Committee also expresses concerns at often rising rates of youth suicide (for further discussion, see article 6, page 92) and increasing use of tobacco, alcohol and drugs. For example:

"The Committee takes note of the ruling by the Constitutional Court on the 10th of May 2006 to liberalize the criminalization of abortion in certain cases, which is likely to lower the maternal mortality rates among adolescent girls. Nevertheless, the Committee is seriously concerned over the high and increasing rate of teenage pregnancies and at the lack of adequate and accessible sexual and reproductive health services, also due to inadequate allocation of resources in these sectors. In addition to causing risks to physical and mental health, the incidence of adolescent pregnancies also limit the personal development of the individual, have a detrimental affect on young women's ability to sustain themselves financially and create a poverty trap with overall negative effects for society. Furthermore, the Committee is concerned over the rate of adolescent suicides.
"The Committee recommends that the State Party promote and ensure access to reproductive health services for all adolescents, including sex and reproductive health education in schools as well as youth-sensitive and confidential counselling and health care services, taking into due account the Committee's General Comment No. 4 on adolescent health and development in the context of the Convention (CRC/GC/2003/4). Given the ruling of the Constitutional Court on the 10th of May 2006 to allow abortions in certain cases, the Committee encourages the State Party to ensure that safe medical facilities are available for such instances. Furthermore, the Committee recommends that an appropriate strategy dedicate adequate resources to awareness raising, counselling services and other measures in order to prevent adolescent suicides." (Colombia CRC/C/COL/CO/3, paras. 70 and 71)

"While noting the State Party's efforts to address adolescent health issues, in collaboration with international agencies such as the United Nations Population Fund (UNFPA), WHO, the Joint United Nations Programme on HIV/AIDS (UNAIDS) and UNICEF, the Committee is concerned about the limited access by teenagers to reproductive health education and services, as well as inadequate sex education at schools. In this light, the Committee welcomes all new measures targeted at young people, such as the establishment of a 'youth-friendly' centre as a pilot project in the capital. The Committee notes with appreciation that the State Party has finalized its National Strategic Plan on AIDS 2003-2006 and that HIV incidence remains low in the State Party. As regards the aftermath of the long period of political violence in Algeria, the Committee notes with appreciation the State Party's efforts to respond to the needs of traumatized children, for example by implementing a National Programme of Mental Health. Despite these steps taken, the Committee is concerned at the increasing rate of suicides among adolescents.
"Taking into account its General Comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child, the Committee recommends that the State Party strengthen its efforts to promote adolescent health, including sex and reproductive health education in schools, and to provide adolescents with youth-sensitive and confidential counselling and health-care services. In addition, it recommends that further efforts, both financial and human, be undertaken for the prevention and care of adolescents' mental health problems." (Algeria CRC/C/15/Add.269, paras. 58 and 59)

"While acknowledging measures and new legislation to address the high levels of alcohol and tobacco consumption, the Committee is concerned at the level of tobacco and alcohol consumption among adolescents and notes that there is insufficient promotion of good health practices in the State Party, with little targeting of nutrition, smoking, alcohol, fitness and personal hygiene.
"The Committee is also concerned at the insufficient information concerning adolescent health, in particular with regard to reproductive health. The Committee is also concerned that contraceptives are not within the financial reach of all, thus limiting their use in the State Party, and that there is a high incidence of teenage pregnancies and abortions.

Adolescent health and development in the context of the Convention on the Rights of the Child

Committee on the Rights of the Child, General Comment No. 4, 2003: summary

Adolescents up to 18 are holders of all the rights in the Convention; they are entitled to special protection measures and, according to their evolving capacities, they can progressively exercise their rights. The Committee on the Rights of the Child notes that States Parties have not given sufficient attention to the specific concerns of adolescents as rights holders and to promoting their health and development. The General Comment aims to raise awareness and provide guidance and support to States.

Parents and others legally responsible for adolescents need to fulfil their responsibilities with care: "Adolescents need to be recognised by the members of their family environment as active rights holders who have the capacity to become full and responsible citizens, given the proper guidance and direction". To enable adolescents to exercise their right to participation, public authorities, parents and others working with or for children need to create an environment "based on trust, information-sharing, the capacity to listen and sound guidance that is conducive for adolescents participating equally, including in decision-making processes".

In the context of adolescents' rights to health and development, States must set a minimum age for sexual consent and marriage, the same for boys and girls. Adolescents must have easy access to individual complaint systems as well as judicial and appropriate non-judicial redress mechanisms that guarantee fair and due process.

States are encouraged to respect strictly adolescents' right to privacy and confidentiality, including in relation to advice and counselling on health matters. Adolescents deemed mature enough to receive counselling without the presence of a parent or other person are entitled to privacy and may request confidential services, including treatment.

Adolescents must be protected from all forms of discrimination, violence, neglect and exploitation, paying increased attention to forms of violence that particularly affect this age group (and to the particular vulnerability of adolescents with disabilities); protection measures must be in line with the Convention.

Systematic, disaggregated data collection is required to monitor the health and development of adolescents; where appropriate, adolescents should participate in the analysis to ensure the information is understood and utilised in an adolescent-sensitive way.

Legislation, policy and programmes should be developed and implemented in a manner consistent with adolescents' evolving capacities. This should include providing parents with appropriate assistance, information and support to facilitate relationships of trust and confidence in which issues regarding, for example, sexuality and sexual behaviour and risky lifestyles can be openly discussed and acceptable solutions found, respecting the adolescent's rights. Adolescent parents should be provided with support and guidance for their own and their children's well-being.

All adolescents have a right to receive accurate and appropriate information on how to protect their health and development and practise healthy behaviours. This should include information on the use and abuse of tobacco, alcohol and other substances, safe and respectful social and sexual behaviours, diet and physical activity.

The Committee also emphasizes the importance of taking into consideration both individual behaviours and environmental factors (such as poverty, armed conflict or social exclusion, political, social and economic instability and all types of migration) which increase adolescents' vulnerability and risk. By investing heavily in preventive policies, States can drastically reduce vulnerability and risk and provide cost-effective ways for society to help adolescents develop harmoniously in a free society.

States Parties have the following obligations:

(a) To create a safe and supportive environment for adolescents, including within their family, in schools, in all types of institutions in which they may live, within their workplace and/or in the society at large;

(b) To ensure that adolescents have access to the information that is essential for their health and development and that they have opportunities to participate in decisions affecting their health (notably through informed consent and the right of confidentiality), to acquire life skills, to obtain adequate and age-appropriate information, and to make appropriate health behaviour choices;

(c) To ensure that health services, including counselling and health services for mental and sexual and reproductive health, of appropriate quality and sensitive to adolescents' concerns, are available to all adolescents;

(d) To ensure that adolescent girls and boys have the opportunity to participate actively in planning and programming for their own health and development;

(e) To protect adolescents from all forms of labour which may jeopardize the enjoyment of their rights, notably by abolishing all forms of child labour and by regulating the working environment and conditions in accordance with international standards;

(f) To protect adolescents from all forms of intentional and unintentional injuries, including those resulting from violence and road traffic accidents;

(g) To protect adolescents from all harmful traditional practices, such as early marriages, honour killings and female genital mutilation;

(h) To ensure that adolescents belonging to especially vulnerable groups are fully taken into account;

(i) To implement measures for the prevention of mental disorders and the promotion of mental health of adolescents.

States must provide health services sensitive to the particular needs and human rights of all adolescents, paying attention to the following:

(a) *Availability.* Primary health care should include services sensitive to the needs of adolescents, with special attention given to sexual and reproductive health and mental health;

(b) *Accessibility.* Health facilities, goods and services should be known and easily accessible (economically, physically and socially) to all adolescents, without discrimination. Confidentiality should be guaranteed, when necessary;

(c) *Acceptability.* While fully respecting the provisions and principles of the Convention, all health facilities, goods and services should respect cultural values, be gender sensitive, be respectful of medical ethics and be acceptable to both adolescents and the communities in which they live;

(d) *Quality.* Health services and goods should be scientifically and medically appropriate, which requires personnel trained to care for adolescents, adequate facilities and scientifically accepted methods.

States are encouraged to adopt a multisectoral approach, calling for systematic collaboration and coordination within Government. Public health and other services utilized by adolescents should also be encouraged and assisted to collaborate with, *inter alia*, private and/or traditional practitioners, professional associations, pharmacies and organizations that provide services to vulnerable groups of adolescents. A multisectoral approach will not be effective without international cooperation. So States are encouraged, when appropriate, to seek cooperation with United Nations specialized agencies, programmes and bodies, international NGOs and bilateral aid agencies, international professional associations and other non-state actors.

(*Committee on the Rights of the Child, General Comment No. 4, "Adolescent health and development in the context of the Convention on the Rights of the Child", 2003, CRC/GC/2003/4. For full text see www.ohchr.org/english/bodies/crc/comments.htm.)*

"The Committee recommends that the State Party pay close attention to adolescent health, taking into account General Comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child; and strengthen its efforts to promote adolescent health, including by providing sexual and reproductive health education in schools and introducing school health services, including youth-sensitive and confidential counselling and care. In order to decrease tobacco smoking and alcohol consumption among adolescents, the Committee recommends that the State Party initiate campaigns designed especially for adolescents on healthy behavioural choices." (Russian Federation CRC/C/RUS/CO/3, paras. 54 to 56)

"... The Committee recommends that the State Party increase its efforts in promoting adolescent health policies, particularly with respect to accidents, suicide and violence, and in strengthening reproductive health education and counselling services. In this regard, the Committee also recommends the inclusion of men in all training programmes on reproductive health. The Committee further suggests that a comprehensive and multidisciplinary study be undertaken to understand the scope of adolescent health problems, including the negative impact of early pregnancy as well as the special situation of children infected with, affected by or vulnerable to HIV/AIDS and STDs. Additionally, it is recommended that the State Party undertake further measures, including the allocation of adequate human and financial resources, to develop youth-friendly counselling, care and rehabilitation facilities for adolescents that would be accessible, without parental consent, where in the best interests of the child..." (Benin CRC/C/15/Add.106, para. 25)

It reinforced these recommendations when it examined Benin's Second Report:

"The Committee is concerned that insufficient attention has been paid to adolescent health issues, including developmental, mental and reproductive health concerns. The Committee is specifically concerned at the situation of girls due to the high percentage of unwanted pregnancies and complications due to unsafe abortions, as these have a negative impact on their health and development, and notes the limited availability of programmes and services in the area of adolescent health at school. While noting information provided by the delegation on the existence of a drug abuse centre, the Committee is concerned at the lack of information and data on the level of drug abuse and alcohol consumption in the State Party and that these practices are not prohibited.

"The Committee recommends that the State Party, taking into account the Committee's General Comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child:
(a) Undertake a comprehensive study to assess the nature and extent of adolescent health problems and, with the participation of adolescents, use it as a basis to formulate adolescent health policies and programmes with a particular focus on the prevention of early pregnancies and sexually transmitted infections (STIs), especially through reproductive health education;
(b) Strengthen adolescent-sensitive mental and reproductive health counselling services and make them known and accessible to adolescents;
(c) Strengthen measures to address the problem of alcohol consumption and drug abuse among children and ensure that the drug abuse centre receives adequate human and financial resources for its proper functioning; and
(d) Seek technical assistance from UNICEF, WHO and UNFPA." (Benin CRC/C/BEN/CO/2, paras. 55 and 56)

Mental health. The Committee has commented on the lack of mental health services – long waiting lists and lack of child psychiatrists and psychologists – in various States (an issue also addressed in its General Comment No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child"). For example:

"The Committee is concerned at the lack of mental health assistance for children and at the situation of mental health among children and adolescents, particularly in the context of widespread family instability and the armed mutinies.
"The Committee recommends that the State Party ensure the availability of mental health assistance to children, taking into consideration the developmental needs of children and addressing in particular those children affected by family instability, HIV/AIDS and the armed mutinies." (Central African Republic CRC/C/15/Add.138, paras. 62 and 63)

When it examined Norway's Second Report, it was concerned about various adolescent mental health problems, and a lack of appropriate services:

"The Committee joins the State Party in expressing concern at the long waiting list and delayed access to mental health services and professionals for children which are due to an insufficient number of psychologists and psychiatrists.
"The Committee encourages the State Party to explore ways of providing children with more timely access to mental health services,

and to address in particular the shortage of psychiatrists and psychologists." (Norway CRC/C/15/Add.126, paras. 40 and 41)

It pursued the same issues when it examined Norway's Third Report:

"While welcoming measures taken to strengthen the mental health services for children and young people, the Committee is concerned at the remaining challenges, such as the waiting time for assistance and care. The Committee is also concerned at the shortage of child and adolescent psychiatrists and psychologists.

"The Committee encourages the State Party to speed up the development of mental health care so as to ensure that adequate treatment and care are provided to all children and young people in need without undue delay.

"The Committee remains deeply concerned at the high incidence of suicide among adolescents, which accounts for about one out of every four deaths among young women and men.

"The Committee urges the State Party to strengthen the health service resources for people in suicidal crisis and to take measures to prevent suicide among groups that are at risk." (Norway CR/C/15/Add.263, paras. 33 to 36)

The Committee has become concerned about over-prescription of drugs in relation to diagnoses of "attention deficit disorder" and hyperactivity in children, proposing to several States that other forms of treatment/management should be considered:

"... The Committee is also concerned at the information that attention deficit hyperactivity disorder (ADHD) and attention deficit disorder (ADD) are being misdiagnosed and therefore psychostimulant drugs overprescribed, despite the growing evidence of the harmful effects of these drugs.

"The Committee recommends that further research be undertaken on the diagnosis and treatment of ADHD and ADD, including the possible negative effects of psychostimulants on the physical and psychological well-being of children, and that other forms of management and treatment be used as much as possible to address these behavioural disorders." (Australia CRC/C/15/Add.268, paras. 49 and 50. See also Finland CRC/C/15/Add.272, paras. 38 and 39.)

"States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children": article 24(3)

Article 24(3) – together with article 19 (which requires protection from all forms of physical or mental violence, see page 249) and the non-discrimination principle in article 2 – requires a review in all States of any traditional practices that involve violence and/or are prejudicial to the health of children. The health risks of practices which involve some invasion of the child's bodily integrity may be intensified by their performance by people with no medical training, and in unhygienic conditions. The lack of appropriate anaesthesia intensifies the suffering of children.

Article 24(3) states unequivocally that appropriate measures should be taken with a view to abolishing traditional practices prejudicial to health. Presumably, mature children should have the same rights, if any, as adults have under the law in each society to consent to practices that involve a degree of violence but are not significantly prejudicial to health.

The proposal that the Convention should protect children from traditional practices harmful to health was made by the *ad hoc* NGO group during the drafting of the Convention (E/CN.4/1986/39, pp. 10 and 11; Detrick, p. 350). Various country representatives proposed that the provision should refer in particular or for example to the practice of female genital mutilation of girls and young women, which was opposed on the grounds that it would be wrong to single out one practice. One other specific practice – that of preferential care of male children – was referred to during the drafting discussions of the Working Group on the Convention (E/CN.4/1987/25, pp. 8 to 10; Detrick, p. 351).

Several representatives concurred that the term traditional practices would include all those outlined in the 1986 Report of the Working Group on Traditional Practices affecting the Health of Women and Children (E/CN.4/1986/42). The Report refers to female circumcision, other forms of mutilation (such as facial scarification), forced feeding of women, early marriage, the various taboos or practices that prevent women from controlling their own fertility, nutritional taboos and others. There was also discussion of other traditional practices, including dowries in certain regions of the world, crimes of honour and the consequences of preferential treatment for male children (E/CN.4/1986/42, para. 18). The Committee has consistently condemned early marriage, and discrimination in the legal age for marriage. The Committee strongly recommends that States Parties review, and where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys. (General Comment No. 4, on "Adolescent

health and development in the context of the Convention on the Rights of the Child", 2003, CRC/GC/2003/4. For further discussion, see article 1, page 8.)

The Working Group notes that the availability of amniocentesis and other techniques which enable the sex of the foetus to be determined are leading to selective abortion on grounds of gender in some areas of the world. The report emphasizes the importance of recording and analysing infant and child mortality rates by gender (para. 164; for discussion, see article 6, page 92).

The Committee on the Elimination of Discrimination against Women, in a General Recommendation in 1990, expresses concern at the continuation of "the practice of female circumcision and other traditional practices harmful to the health of women", and proposes that States Parties should "take appropriate and effective measures with a view to eradicating the practice of female circumcision".

The General Recommendation also proposes that States Parties "include in their national health policies appropriate strategies aimed at eradicating female circumcision in public health care. Such strategies could include the special responsibility of health personnel including traditional birth attendants to explain the harmful consequences of female circumcision." (Committee on the Elimination of Discrimination against Women, General Recommendation No. 14, 1990, HRI/GEN/1/Rev.8, p. 298)

In December 2001 the General Assembly adopted a resolution on traditional or customary practices affecting the health of women or girls. It includes detailed recommendations to States, including:

"To collect and disseminate basic data about the occurrence of traditional or customary practices affecting the health of women and girls, including female genital mutilation;

"To develop, adopt and implement national legislation, policies, plans and programmes that prohibit traditional or customary practices affecting the health of women and girls, including female genital mutilation, and to prosecute the perpetrators of such practices;

"To establish, if they have not done so, a concrete national mechanism for the implementation and monitoring of relevant legislation, law enforcement and national policies;

"To establish or strengthen support services to respond to the needs of victims by, *inter alia,* developing comprehensive and accessible sexual and reproductive health services and by providing training to health care providers at all levels on the harmful health consequences of such practices;

"To address specifically in the training of health and other relevant personnel traditional or customary practices affecting the health of women and girls, also addressing the increased vulnerability of women and girls to HIV/AIDS and other sexually transmitted infections due to such practices;…" (United Nations General Assembly resolution, A/RES/56/128, 19 December 2001)

The 1994 Programme of Action of the International Conference on Population and Development notes that: "In a number of countries, harmful practices meant to control women's sexuality have led to great suffering. Among them is the practice of female genital cutting, which is a violation of basic rights and a major lifelong risk to women's health" (para. 7.35; see www.unfpa.org/index.htm). The Programme of Action urges "Governments and communities (to)… urgently take steps to stop the practice of female genital cutting and protect women and girls from all such similar unnecessary and dangerous practices. Steps to eliminate the practice should include strong community outreach programmes involving village and religious leaders, education and counselling about its impact on girls' and women's health, and appropriate treatment and rehabilitation for girls and women who have suffered cutting. Services should include counselling for women and men to discourage the practice." (Para. 7.40)

The United Nations Secretary-General's Study on Violence Against Children (2006) quotes a WHO estimate that between 100 million and 140 million girls and women in the world have undergone some form of female genital mutilation/cutting. The Study report, submitted to the General Assembly in October 2006, recommends prohibition of all forms of violence against children, including all harmful traditional practices, and sets Governments the goal of achieving this by 2009 (Report of the independent expert for the United Nations study on violence against children, United Nations, General Assembly, sixty-first session, August 2006, A/61/299, paras. 98 and 116). The *World Report on Violence against Children* states: "Bringing an end to FGM requires clear prohibition, education and awareness-raising within families and communities and community mobilization. Triggering changes in community knowledge, beliefs, attitudes and practices is the key to success. This requires an advocacy strategy in which religious and

community leaders, health professionals and a variety of actors participate; persuading individual parents or mothers is not sufficient." The report also emphasizes that many other practices causing violence and harm to children need exposure and campaigning as part of the efforts to prevent them (Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006, Chapter 3, pp. 88 to 90).

Practices which should be reviewed in the light of the Convention's principles include:

- all forms of genital mutilation and circumcision;
- binding, scarring, burning, branding, coin-rubbing, tattooing, piercing;
- initiation ceremonies involving, for example, forced holding under water;
- deliberate discriminatory treatment of children involving violence and/or prejudicial to health – for example, preferential feeding and/or care of male children; lack of care for children with disabilities, or children born on certain days; food taboos; etc.;
- beliefs that children are witches or possessed by evil spirits;
- forms of discipline which are violent and/or prejudicial to health;
- early marriage and dowries.

The Committee has expressed grave concern about persisting harmful traditional practices, usually highlighting female genital mutilation/cutting (FGM/C), and recommended various actions in its Concluding Observations on successive reports. For example:

"The Committee welcomes the promulgation of Act No. 98-106 prohibiting female genital mutilation. However, the Committee is deeply concerned at its persistence along with other practices harmful to the health of children, particularly the girl child, including forced and early marriages, dowry disputes, initiation rites such as scarification, and rites regarding girls training in voodoo priesthood.
"While noting the measures taken to combat harmful traditional practices, the Committee recommends that the State Party:
(a) Evaluate the campaign against female genital mutilation undertaken in 1998 in collaboration with the Division for the Advancement of Women and UNICEF;
(b) Strengthen existing measures and adopt further measures, including by establishing and implementing international and bilateral agreements and programmes with neighbouring States and by working with traditional and religious leaders, to ensure that harmful traditional practices are effectively banned;
(c) Using the media, raise awareness within the family and extended family and among traditional and religious leaders of the harmful impact of female genital mutilation and other harmful traditional practices on the psychological and physical health and welfare of the girl child as well as her future family;
(d) Assist and empower practitioners of female genital mutilation to find an alternative source of income;
(e) Continue discussions with voodoo priests to ensure that the best interests of the girl child are protected at all times;
(f) Continue and strengthen its cooperation in this regard with, among others, UNICEF and the Division for the Advancement of Women." *(Togo CRC/C/15/Add.255, paras. 56 and 57)*

"The Committee welcomes the introduction of a bill on violence against women in Parliament in May 2003, aimed to prohibit forms of violence such as harmful traditional practices and domestic violence, including marital rape. However, it reiterates its concern at the widespread and continuing existence of harmful traditional practices in the State Party, most notably the practice of female genital mutilation, as well as scarification and ritual killing of children which pose very serious threats to children, in particular the girl children.
"The Committee is concerned at the lack of legal prohibition and sufficient interventions on the part of the State Party to address harmful traditional practices. The Committee is also concerned at the lack of support services available to protect girls who refuse to undergo FGM and of services to rehabilitate girl victims of the practice.
"The Committee recommends that the State Party, as a matter of urgency, take all necessary measures to eradicate all traditional practices harmful to the physical and psychological well-being of children, by strengthening awareness-raising programmes. The Committee further recommends the State Party to adopt federal legislation prohibiting such practices and encourage further legal changes at the state level, in particular, female genital mutilation, as well as measures to provide support for girls at risk and girls who refuse to undergo FGM, and provide recovery services for victims of this harmful traditional practice." *(Nigeria CRC/C/15/Add.257, paras 56 to 58)*

"The Committee notes with concern that certain harmful traditional practices continue to prevail in the State Party, most notably the caste system and traditions such as the Deuki, Kumari, Jhuma, Badi, Kamlari and Chaupadi, causing extreme insecurity, health hazards

and cruelty to girl children. The Committee regrets the absence of legal prohibition and sufficient interventions on the part of the State Party to address the harmful effects of these traditional practices on the enjoyment of rights by children who are affected by these practices.
"The Committee recommends that the State Party, as a matter of urgency, take all necessary measures to eradicate all traditional practices harmful to the physical and psychological well-being of children, by strengthening awareness-raising programmes. The Committee further recommends the State Party to adopt legislation prohibiting such practices." *(Nepal CRC/C/15/Add.261, paras. 67 and 68)*

"The Committee notes with appreciation the efforts undertaken by the State Party to address the practice of female genital mutilation (FGM), including a number of programmes in cooperation with UNFPA. However, it remains concerned that FGM is not specifically prohibited by law and is still widely practised in the State Party. Concern is also expressed about the persistence of other harmful traditional practices, including early marriage.
"The Committee recommends that the State Party adopt legislative measures to prohibit FGM and conduct awareness-raising campaigns to combat and eradicate this and other traditional practices harmful to the health, survival and development of children, especially girls. The Committee recommends that the State Party introduce sensitization programmes for practitioners and the general public to encourage change in traditional attitudes and discourage harmful practices, engaging with the extended family and the traditional and religious leaders. It further recommends that the State Party provide retraining, where appropriate, for practitioners and support them in their efforts to find alternative sources of income." *(Uganda CRC/C/UGA/CO/2, paras. 55 and 56)*

The Committee notes that, because of migration, female genital mutilation occurs throughout the world:

"While welcoming the legal measures to prohibit and prosecute cases of female genital mutilation (FGM), the Committee is concerned that this practice involving girls and young women in the context of immigrant communities still occurs in Austria and abroad where certain children are taken to perform the procedure and brought back.
"The Committee recommends that the State Party strengthen its efforts to prevent and eliminate this practice by conducting well-targeted and appropriate educational campaigns in the context of religious communities and by considering the possibility of making punishable by law the acts of those involved in the performance of FGM outside Austria." *(Austria CRC/C/15/Add.251, paras. 43 and 44)*

It has proposed extraterritorial legislation:

"The Committee welcomes the efforts made and understands the difficulties faced by the State Party in protecting girls within its jurisdiction from female genital mutilation carried out outside its territory. Nevertheless, the Committee urges the State Party to undertake strong and effectively targeted information campaigns to combat this phenomenon, and to consider adopting legislation with extraterritorial reach which could improve the protection of children within its jurisdiction from such harmful traditional practices." *(Netherlands CRC/C/15/Add.114, para. 18)*

The Committee has expressed concern at male circumcision carried out in unsafe or unhygienic conditions:

"The Committee is concerned that male circumcision is carried out, in some instances, in unsafe medical conditions... The Committee recommends that the State Party take effective measures, including training for practitioners and awareness-raising, to ensure the health of boys and protect against unsafe medical conditions during the practice of male circumcision." *(South Africa CRC/C/15/Add.122, para. 33)*

"The Committee also recommends that the State Party address health risks associated with male circumcision." *(Lesotho CRC/C/15/Add.147, para. 44)*

The Committee has expressed concern at virginity testing in South Africa:

"The Committee is also concerned about the traditional practice of virginity testing which threatens the health, affects the self-esteem, and violates the privacy of girls... The Committee also recommends that the State Party undertake a study on virginity testing to assess its physical and psychological impact on girls. In this connection, the Committee further recommends that the State Party introduce sensitization and awareness-raising programmes for practitioners and the general public to change traditional attitudes and discourage the practice of virginity testing in light of articles 16 and 24 (3) of the Convention." *(South Africa CRC/C/15/Add.122, para. 33)*

"States Parties undertake to promote and encourage international cooperation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries": article 24(4)

WHO, UNICEF and many other United Nations and United Nations-related agencies are particularly engaged in promoting international cooperation. Cooperation includes aid, advice and technical assistance, collaboration on research, and so on (see also article 4, page 69).

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 24, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 24 is particularly relevant to **departments of health, welfare, education, planning and environment**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 24 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 24 likely to include the training of **health workers, social workers and teachers, and also parenting education and health promotion for children and adolescents**)?

• Specific issues in implementing article 24

- ☐ Has the State undertaken measures to implement article 24 to the maximum extent of available resources?

Does legislation in the State provide for the respect for article 12 (1) and (2) (the views of the child) in relation to

- ☐ the planning and development of all health care services?
- ☐ decision-making in relation to individual health treatment of the child?

Do all children in the jurisdiction

- ☐ have the right to enjoyment of the highest attainable standard of health?
- ☐ have access to facilities for the treatment of illness and the rehabilitation of health?

- ☐ Do all children with disabilities have the right to the same level of health care in the same system as other children?
- ☐ Do girls have equal rights to health care?

How to use the checklist, *see page XIX*

Is adequate information collected to ensure accuracy of
- ☐ infant mortality rates?
- ☐ under-five mortality rates?
- ☐ mortality rates for older children?
- ☐ to provide disaggregated data in order to consider issues of discrimination?

☐ Is there a consistent and continuing reduction in the infant and child mortality rates in the State?

☐ Has the State developed a definition of necessary medical assistance and health care for the child?

☐ Do all children in the jurisdiction have access to necessary medical assistance and health care?

☐ Do children have access to appropriate confidential health services, including information, counselling and supplies?

☐ Are adolescents directly engaged in the design of health services for their use?

☐ Is the development of primary health care adopted as a priority?

Has the State set appropriate targets for the full attainment of the child's right under article 24 in relation to
- ☐ infant, under-five, under-18 and maternal mortality rates?
- ☐ access by all women to prenatal care, trained attendants during childbirth and referral facilities for high-risk pregnancies and emergencies?
- ☐ access by all couples to information and services to ensure that pregnancies are not too early, too closely spaced, too late or too many?
- ☐ reduction of severe and moderate malnutrition among children?
- ☐ reduction of rate of low birth weight?
- ☐ reduction of iron-deficiency anaemia?
- ☐ elimination of vitamin A deficiency?
- ☐ access to safe drinking water?
- ☐ access to sanitary means of excreta disposal?
- ☐ elimination of guinea worm disease?
- ☐ protection from environmental pollution?
- ☐ eradication of poliomyelitis?
- ☐ elimination of neonatal tetanus?
- ☐ elimination of measles?
- ☐ maintenance of high levels of immunization coverage?
- ☐ reduction in deaths due to diarrhoea and the diarrhoea incidence rate?
- ☐ reduction in deaths due to acute respiratory infections?

Has the State ensured adequate access to health education, health promotion and support to the public and in particular to parents and children on
- ☐ child health and nutrition?
- ☐ advantages of breastfeeding?
- ☐ hygiene and environmental sanitation?
- ☐ prevention of accidents?

How to use the checklist, see page XIX

- ☐ preventive health care?
- ☐ family-planning education and services, including appropriate services for adolescents?
- ☐ HIV/AIDS-related prevention education and information?

☐ Has the State taken appropriate action to ensure implementation of the Inter-Agency Guidelines for Breastfeeding in areas affected by HIV/AIDS?

☐ Has the State taken appropriate action to ensure implementation of the International Code of Marketing of Breastmilk Substitutes?

☐ Has the State reviewed all traditional practices involving children in all sectors of the population to ensure that none is prejudicial to health or incompatible with other articles in the Convention (in particular articles 3, 6, and 19)?

☐ Has the State taken effective and appropriate measures to abolish all traditional practices prejudicial to the health of children or incompatible with other provisions of the Convention?

☐ Is the State involved in international cooperative exercises to exchange information and improve capacity and skills in relation to realizing the health rights of children?

Reminder: **The Convention is indivisible and its articles interdependent. Article 24 should not be considered in isolation.**

Particular regard should be paid to: The other general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 24 include:

Article 5: parental guidance and the child's evolving capacities
Article 17: access to appropriate information and role of the media
Article 18: parental responsibilities and state assistance
Article 19: protection from all forms of violence
Article 23: rights of children with disabilities
Article 25: right to periodic review of treatment
Article 27: right to adequate standard of living
Article 28: right to education
Article 29: aims of education
Articles 32 to 36: protection from various forms of exploitation
Article 39: recovery and reintegration for child victims

Child's right to periodic review of treatment

Text of Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 25 requires periodic review of the treatment and circumstances of children who have been placed by the authorities for the purposes of care, protection or treatment of their health. This includes placements in families or institutions (private or state-run) for children deprived of their family environment, adopted children, refugee children, children with disabilities, sick or mentally disordered children, children placed in residential schools, children deprived of their liberty, children being provided with rehabilitative care or in other placements for offending behaviour. Reviews should consider both the appropriateness of the placement and the progress of the treatment or care.

In its quiet way article 25 is a very important right under the Convention on the Rights of the Child because it provides safeguards against one of the most serious forms of child abuse – abuse by the State. Children in all parts of the world suffer neglect and mistreatment in a wide variety of residential placements, having been put there by the State in the sincere belief that this is in their best interests.

Article 25 is also important because it offers great potential for developing enforceable legal rights and safeguards. Regulations governing "periodic review of treatment" can establish high standards, goals and best practice for all professionals working with children in placements and can secure children's rights, for example to be heard, to be in touch with the outside world and to have access to an effective complaints procedure. ■

Summary

"... a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health"

The word "competent" means that the authorities have the appropriate competence to act and is not a qualitative judgement on professional abilities. The forms of placement falling within the scope of this article may be run by the State or privately. In the Day of General Discussion held on "The private sector as service provider and its role in implementing child rights", the Committee noted that:

"... article 25 of the Convention specifically calls for a periodic review of the treatment and the circumstances of children who have been placed by the authorities for the purpose of care, protection or treatment of their health, including private facilities, thus establishing obligations for the State Party for the setting of standards and monitoring vis-à-vis the private sector..." (Committee on the Rights of the Child, Report on the thirty-first session, September/October 2002, CRC/C/121, para. 653)

The placements include foster and adoptive families, children's homes and institutions, immigration and refugee detention centres, hospitals, health units and wards, therapeutic centres, boarding schools, detention centres and prisons. Residential schools must be included even though "education" is not mentioned among the purposes listed in article 25, since the point of a boarding placement is to secure the care of children as well as their education. "Punishment" is also not one of the purposes, but detention centres and other placements for offending behaviour all provide care for children as well as punishment.

Though it covers state placements in private institutions, article 25 does not appear to include placements privately arranged by parents. At one stage in the drafting procedure, it was proposed that a specific exemption should be made of placements arranged by parents. Although this exemption did not appear in the final text, there was general agreement that placements by parents were not included (E/CN.4/1986/39, pp. 11 to 13; Detrick, p. 360). Exactly why privately arranged placements should not be periodically reviewed was not made clear, since the children concerned are, if anything, more vulnerable than those who are placed by the State. The Committee has nonetheless encouraged States to check on the welfare of privately placed children:

"Independent monitoring should be set up for public and private care institutions. In the light of article 25 of the Convention, the Committee further suggests the State Party to systematically review the conditions of children living in an informal type of placement." (Guinea CRC/C/15/Add.100, para. 21)

"The Committee is also concerned about the conditions of children living in informal types of placement (intra-family 'adoption'), whose situation is not periodically reviewed in accordance with article 25 of the Convention... In the light of article 25 of the Convention, the Committee further suggests that the State Party undertake a study to review the conditions of children living in an informal type of placement." (Chad CRC/C/15/Add.107, para. 22)

Article 3(3) requires States to secure standards in all institutions, services and facilities. Both articles 3(3) and 25 are about monitoring. The difference between them is that 3(3) concerns the monitoring of institutions and staff, and article 25 the monitoring of the individual progress of each child in the institution. The Committee often encourages States to "monitor" the rights of children in institutions and foster care, which, under the Convention, must mean both the systems and the individual children concerned.

Article 12, requiring that the views of children are heard, is also relevant in that children's voices should be heard in their reviews (see page 166). The Committee stressed the importance of this in its Day of General Discussion on "Children without parental care":

"The Committee is concerned at the fact that children are not often heard in the separation and placement processes. It is also concerned that decision-making processes do not attach enough weight to children as partners even though these decisions have a far-reaching impact on the child's life and future....
"In the light of article 12 of the Convention, the Committee recommends that all stakeholders continue and strengthen their efforts to take into consideration the views of the child and facilitate their participation in all matters affecting them within the evaluation, separation and placement process, in the out-of-home care and during the transition process. It recommends that children should be heard throughout the protection measure process, before making the decision, while it is implemented and also after its implementation. For this purpose, the Committee recommends an establishment of a special mechanism which values children as partners." (Committee on the Rights of the Child, Report on the fortieth session, September 2005, CRC/C/153, paras. 663 and 664)

The Committee has also made recommendations along these lines to reporting countries, for example proposing that Poland:

"Ensure periodic review of placement of children in institutions which takes into account the views and best interests of the child while aiming, whenever possible, at reintegrating them into their families, with appropriate counselling and support, or at finding other forms of care than institutionalization;..." (Poland CRC/C/15/Add.194, para 37)

The Committee sees effective complaints mechanisms as an integral part of effective monitoring:

"The Committee recommends that the State Party provide additional training, including in children's rights, for social and welfare workers, ensure the periodic review of placements in institutions and establish an independent complaints mechanism for children in alternative care institutions." (Grenada CRC/C/15/Add.121, para. 18)

First and foremost the Committee has been anxious that there is a regular review of placement of children in institutional care:

"... the Committee recommends that the State Party... ensure that the placement of children in institutional care is always assessed by a competent, multidisciplinary group of authorities and that the placement is done for the shortest period of time and subject to judicial review and that it is further reviewed in accordance with article 25 of the Convention." (Mongolia CRC/C/15/Add.264, para. 34)

"The Committee recommends that the State Party adopt and fully implement the State Programme on De-Institutionalization and Alternative Care and promote measures alternative to institutionalization. The Committee further recommends that the State Party take all necessary measures to ensure that children in institutions enjoy all rights of the Convention and in particular ... that their placement in institution is subject to periodic review with a view to returning them to their families of origin or to placing them in family-type forms of alternative care." (Azerbaijan CRC/C/AZE/CO/2, para. 39)

Foster placements must also be checked regularly:

"The Committee ... notes that the regular monitoring focuses more on the quality of placement of children in foster care than on the need to review the placement decision as such, in accordance with article 25 of the Convention. The Committee is concerned that the efforts to provide permanence and stability for children in care may on occasion lead to a premature decision that family reunification is no longer possible." (Barbados CRC/C/15/Add.103, para. 21)

"While welcoming the efforts of the Ministry of Children and Family Affairs, the Committee is concerned about the insufficient periodic review of children placed in foster homes due to a lack of sufficient numbers of supervisors and lack of training of supervisors." (Norway CRC/C/15/Add.263, para. 26)

"... a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement"

What is to be considered in the review and how often it should occur will necessarily depend on individual circumstances, but States should establish minimum requirements in their legislation. In its Day of General Discussion on "Children without parental care", the Committee emphasized the "principle of individualization":

"In the context of children separated from their parents, the Committee wishes to emphasize the principle of individualization. Every child is unique and the separation from parents and the placement into out-of-home care should always be looked at case by case. There is no one solution which fits all situations. The individualization of solutions means more tailored solutions based on the actual situation of the child, including her/his personal, family and social situation. This provides better opportunities for the assessment of the child's long-term development and it respects the principle of the best interests of the child, e.g., what are the actual needs of the child, how to keep a close relationship with the biological family...
"The Committee recommends that all decisions regarding the separation from parents and the placement into out-of-home care as well as the periodic review of the placement should always be based on the principle of individualization of solutions..." (Committee on the Rights of the Child, Report on the fortieth session, September 2005, CRC/C/153, paras. 667 and 669)

The child's "treatment" encompasses not only clinical treatment for health purposes but also all other aspects of the child's institutional experience, including, for example, measures used to control the child, the child's access to the outside world and how the child's education is affected. In addition "... all other circumstances relevant to his or her placement" must essentially include the reason and justification for the placement. In the report on its Day of General Discussion on the "Administration of juvenile justice" the Committee commented:

"Concern was expressed at the placement of children in institutions, under a welfare

pretext, without taking into due consideration the best interests of the child nor ensuring the fundamental safeguards recognized by the Convention, including the right to challenge the decision of a placement before a judicial authority, to a periodic review of the treatment provided to the child and all other circumstances relevant to the child's placement and the right to lodge complaints." (Committee on the Rights of the Child, Report on the tenth session, October/November 1995, CRC/C/46, para. 228)

Different sorts of review may be required, for example:

- Reviews by judicial or administrative authorities to monitor the appropriateness of compulsory placements (the Committee, for example, recommended that Bulgaria consider establishing a "*guardian ad litem*" system for children in institutional care (Bulgaria CRC/C/15/Add.66, para. 27)). Where deprivation of liberty is concerned, article 37 requires that its use be "as a measure of last resort and for the shortest appropriate time" (see page 556). Rule 2 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty states: "The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release." If children are to have the possibility of early release before expiration of a determinate sentence then some form of periodic review will be necessary to determine whether such early release is possible.
- The Committee stressed that even interim placements must have proper approval and periodic review, for example in its Concluding Observations to Costa Rica:

  "The Committee … is concerned at the considerable duration of interim placement, which in some cases may last over three years, before the matter is brought before a judge for a decision on the final placement of these children.
  "The Committee recommends that interim placement is done for the shortest period of time and regularly reviewed in accordance with article 25 of the Convention. The Committee further recommends that the matter be brought before a judge at the initial phase of the separation of the child from his or her parents." (Costa Rica CRC/C/15/Add.266, paras. 33 and 34)
- Reviews by the involved professionals to assess progress of the treatment. The Committee suggests a multidisciplinary assessment will be necessary.
- Reviews by independent persons as a safeguard against abuse and to check on the general welfare of the child. An essential component of the last form of review is that children should have the opportunity to speak in private about their treatment. The Committee proposes a dedicated mechanism for this:

  "… the Committee recommends that the States Parties establish an independent and effective monitoring mechanism for children without parental care. Such a body should have a mandate to receive, investigate and address complaints from children and do so in a child-sensitive and expeditious manner." (Committee on the Rights of the Child, Report on the fortieth session, September 2005, CRC/C/153, para. 684)

How often should the periodic review occur? While this is at the discretion of the State Party, it can be assumed that the more involuntary the placement is and the more extreme the treatment, the more frequently a review will be required. The Committee expressed concern about Luxembourg's indeterminate placements and long review periods:

"While the Committee notes that placements are reviewed every three years and that Youth Court judges frequently visit minors in institutions, it is concerned that decisions to place young people either in 'open centres' (State Socio-Educational Centres) or in 'closed centres' (Luxembourg Prison) are given for indeterminate periods and that review intervals are very long.
"The Committee recommends that the State Party introduce the rule that placement of children in foster care or in institutions may only be ordered for a fixed period, e.g. one year, with the possibility of prolonging the placement for another fixed period, which should provide for a regular review of the conditions of and the need for placement." (Luxembourg CRC/C/15/Add.250, paras. 36 and 37)

However, although recommending an individualized approach, the Committee stresses that *all* children are entitled to have their placements reviewed at regular intervals, regardless of the success or otherwise of this placement:

"The Committee notes with concern that few institutions undertake a regular review of children placed there. The Committee is further concerned that psychological review is only taken when it is evident that the child's behaviour has changed.
"The Committee recommends that the State Party adopt a comprehensive mechanism of periodic review of children placed in institutions." (Mauritius CRC/C/MUS/CO/2, paras. 43 and 44)

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 25, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 25 is relevant to the **departments of justice, social welfare, education and health**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 25 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 25 likely to include the training of **social workers, lawyers, judiciary, child advocates, teachers, institutional staff, medical personnel (including mental health)**)

• Specific issues in implementing article 25

Are legal and/or formal administrative measures adopted to ensure the periodic review of each child who has been placed for the purposes of care and protection, including

- ☐ foster care?
- ☐ adoption?
- ☐ child care institutions?
- ☐ boarding schools?
- ☐ prisons and detention centres?

and for the treatment of his or her physical or mental health, including

- ☐ hospitals?
- ☐ health units?
- ☐ psychiatric wards?
- ☐ therapeutic centres?

How to use the checklist, *see page XIX*

Are such reviews required to consider
- ☐ the treatment of the child (including all aspects of his or her care)?
- ☐ the placement of the child (including whether its continuation is necessary)?
- ☐ the views of the child (ascertained in private)?

☐ Are such reviews at sufficient intervals to secure the child's protection and welfare?

Reminder: **The Convention is indivisible and its articles interdependent. Article 25 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 25 include:

Article 20: children deprived of their family environment
Article 21: adoption
Article 22: refugee children
Article 23: children with disabilities
Article 24: health services
Article 28: education services
Article 37: deprivation of liberty
Article 39: rehabilitative measures
Article 40: juvenile justice systems

Child's right to benefit from social security

Text of Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Summary

Article 26 concerns financial support for children provided by the State. Children are usually economically dependent upon adults. However, when the adults with responsibility for children are unable to provide for them, either because they are unable to find gainful employment or because their circumstances (illness, disability, child bearing, old age and so on) prevent them from working, then the State has an obligation to ensure that the child has some form of financial support, either paid directly to the child or via a responsible adult. This obligation is upheld in article 26.

Article 26 is subject to the proviso of article 4: "... With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation." During the drafting of article 26, proposals were made to make the right to social security explicitly dependent on the availability of national resources, but this was perceived to be unnecessary in view of article 4 (E/CN.4/1984/71, pp. 16 to 18; Detrick, pp. 364 to 367).

Article 9 of the International Covenant on Economic, Social and Cultural Rights provides: "The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance." The Convention on the Rights of the Child alters these words in that the child has a right to "benefit from" social security rather than a right "to" social security. This reflects the fact that children's economic security is generally bound up with that of their adult caregivers. This dependence also led to the drafting of the second paragraph of article 26, making social security contingent on the caregiver lacking resources – concerns were expressed that, otherwise, ratifying States might have to grant benefits to all children, including those of wealthy parents. The drafters did, however, agree to make clear that children could apply for benefits directly (E/CN.4/1984/71, pp. 16 to 18; Detrick, p. 367). ■

Child's right "to benefit from social security, including social insurance"

ILO Social Security (Minimum Standards) Convention (No.102) sets out the basic elements of social security, which includes medical care and benefit for families and old people and when maternity, sickness, unemployment, employment injuries and invalidity prevent adults from working.

The early years of the Convention, the first half of the 1990s, were marked by a worldwide economic recession. This recession, allied with crippling national debts and a prevailing economic philosophy calling for restraints in social security expenditure, often under aid-linked 'structural adjustment' programmes, led to many ratifying countries freezing or cutting back social security for children. The Committee's Concluding Observations during this period often expressed deep concern about the catastrophic impact of these cutbacks on children.

Since then, governments, donor countries and international financial institutions began to realize that unless the State supports basic services to all the population, a market-oriented strategy was not likely to succeed. The 1995 World Summit for Social Development in Copenhagen recommended strong social security safety nets. Copenhagen's follow-up General Assembly special session, five years later, reported on some progress in eradicating poverty, for example in programmes supporting microcredit, but also marked new threats to the poor, such as the increasing strength of the multinational corporations (United Nations General Assembly, twenty-fourth special session, A/RES/S-24/2, 15 December 2000). In the same year, the United Nations issued the Millennium Declaration which set time-bound goals, the first of which was to "eradicate extreme hunger and poverty". The specific targets within this goal do not actually aim for total eradication, but are nonetheless ambitious: "To halve, by the year 2015, the proportion of the world's people whose income is less than one dollar a day and the proportion of people who suffer from hunger…" (General Assembly resolution, fifty-fifth session, September 2000, A/RES/55/2, para. 19, p. 5). In 2006 the United Nations published a report on progress on the goals. It noted on the first target:

"In 1990, more than 1.2 billion people – 28 per cent of the developing world's population – lived in extreme poverty. By 2002, the proportion decreased to 19 per cent. During that period, rates of extreme poverty fell rapidly in much of Asia, where the number of people living on less than $1 a day dropped by nearly a quarter of a billion people. Progress was not so rapid in Latin America and the Caribbean, which now has a larger share of people living in poverty than South-Eastern Asia and Oceania. Poverty rates in Western Asia and Northern Africa remained almost unchanged between 1990 and 2002 and increased in the transition economies of South-Eastern Europe and the Commonwealth of Independent States. These two regions had previously nearly eradicated the worst forms of poverty, and recent survey data suggest that their poverty rates are again dropping. In sub-Saharan Africa, although the poverty rate declined marginally, the number of people living in extreme poverty increased by 140 million. Many sub-Saharan countries are now showing potential for long-term growth that could bring up standards of living."

And on the target to reduce hunger:

"Chronic hunger – measured by the proportion of people lacking the food needed to meet their daily needs – has declined in the developing world. But progress overall is not fast enough to reduce the number of people going hungry, which increased between 1995-1997 and 2001-2003. An estimated 824 million people in the developing world were affected by chronic hunger in 2003.

"The worst-affected regions – sub-Saharan Africa and Southern Asia – have made progress in recent years. But their advances have not kept pace with those of the early 1990s, and the number of people going hungry is increasing. Of particular concern is Eastern Asia: in the early 1990s, the number of hungry people declined; but again it is on the rise." (*The Millennium Development Goals Report 2006,* United Nations Department of Economic and Social Affairs, DESA, New York, June 2006, pp. 4 and 5)

In 2002 the United Nations General Assembly also held a special session devoted to children. In the resulting report – *A World Fit for Children* – the General Assembly called on "all members of society" to join in a global movement to secure a number of objectives, including the total eradication of poverty:

"… We reaffirm our vow to break the cycle of poverty within a single generation, united in the conviction that investments in children and the realization of their rights are among the most effective ways to eradicate poverty."

It observed:

"Chronic poverty remains the single biggest obstacle to meeting the needs, protecting and pro-

moting the rights of children. It must be tackled on all fronts, from the provision of basic social services to the creation of employment opportunities, from the availability of microcredit to investment in infrastructure, and from debt relief to fair trade practices. Children are hardest hit by poverty because it strikes at the very roots of their potential for development – their growing bodies and minds. Eradication of poverty and reduction of disparities must therefore be a key objective of development efforts. The goals and strategies agreed upon at recent major United Nations conferences and their follow-ups, in particular the Millennium Summit, provide a helpful international framework for national strategies for poverty reduction to fulfil and protect the rights and promote the well-being of children.

"We recognize that globalization and interdependence are opening new opportunities through trade, investment and capital flows and advances in technology, including information technology, for the growth of the world economy, development and improvement of living standards around the world. At the same time, there remain serious challenges, including serious financial crises, insecurity, poverty, exclusion and inequality within and among societies. Considerable obstacles to further integration and full participation in the global economy remain for developing countries, in particular the least developed countries, as well as for some countries with economies in transition. Unless the benefits of social and economic development are extended to all countries, a growing number of people in all countries and even entire regions will remain marginalized from the global economy. We must act now in order to overcome those obstacles affecting peoples and countries and to realize the full potential of opportunities presented for the benefit of all, in particular children. We are committed to an open, equitable, rule-based, predictable and non-discriminatory multilateral trading and financial system. Investment in, *inter alia*, education and training will assist in enabling children to partake of the benefits of the breakthroughs in information and communication technologies. Globalization offers opportunities and challenges. The developing countries and countries with economies in transition face special difficulties in responding to those challenges and opportunities. Globalization should be fully inclusive and equitable, and there is a strong need for policies and measures at the national and international levels, formulated and implemented with the full and effective participation of developing countries and countries with economies in transition to help them respond effectively to those challenges and opportunities, giving high priority to achieving progress for children." (*A World Fit for Children,* outcome document of the 2002 United Nations General Assembly's special session on children, Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, paras. 7, 18 and 19)

During the recession some countries endeavoured to protect children's access to social security. The Committee commended them but often qualified this by a concern that, nonetheless, children from the poorest and most vulnerable groups were falling through the social security net. Few countries can afford to be complacent about their social security systems. For example, though the Committee has commended those Scandinavian countries that have the lowest levels of child poverty in the world, it has raised a new concern, when responding to Second Reports, that decentralization is leading to inequitable distribution of welfare benefits. For example:

"Although the State Party has one of the widest public support systems, disparities between municipalities and social strata seem to be widening, resulting in social exclusion and tension and poor services being delivered to the economically disadvantaged groups. The Committee recommends that all appropriate measures be taken, in accordance with articles 2, 26, 27 and 30 of the Convention, to ensure universal access to social benefits, in particular for the poorer families, and that the public be better informed of their rights in this regard." *(Sweden CRC/C/15/Add.101, para. 18)*

And when examining Sweden's Third Report, the Committee regretted that this concern had still not been adequately addressed (Sweden CRC/C/15/Add.248, para. 4).

While it is undoubtedly more shameful that children in rich nations are suffering unacceptable levels of poverty, the Committee has made clear that even the poorest nations have obligations under article 26 that cannot be excused. For example, the Committee told Nepal:

"The Committee expresses concern about the high level of prevailing poverty in the State Party, which hampers the respect for, and fulfilment of, the rights of children, particularly those living in rural areas, those living in slums and squats, and among the lower castes and ethnic minorities, and the ability of their families to provide them with adequate protection.

"In view of the significant proportion of children living in poverty, the Committee notes with regret the paucity of information concerning the rights of the child to benefit

from social security, and expresses concern at the absence of a comprehensive legislative and regulatory social security system that is in full compliance with article 26 of the Convention.
"In accordance with articles 26 and 27 of the Convention, the Committee recommends that the State Party:
(a) Strengthen its strategy to combat poverty, with due emphasis on monitoring the impact on the rights of children and that it allocate sufficient human and financial resources, including through international assistance, to ensure the implementation of its strategy;
(b) Reinforce its efforts to provide support and material assistance to economically disadvantaged families, notably those living in rural areas, slums and squats and to guarantee the right of children to an adequate standard of living;
(c) Establish poverty indicators and an official poverty line, which will enable the State Party to define the extent of poverty and to monitor and evaluate progress in alleviating poverty and improving the standard of living for children in the State Party;
(d) Establish a social security policy along with a clear and coherent family policy, as well as effective strategies for using the social safety net benefits to further the rights of children and provide adequate financial resources to the social security system.
"The Committee therefore recommends that the State Party make efforts to revise and/or establish a social security policy along with a clear and coherent family policy in the framework of poverty reduction strategy, as well as effective strategies for using the social safety net benefits to further the rights of children." *(Nepal CRC/C/15/Add.261, paras 71 to 74)*

The duty to "take the necessary measures to achieve the full realization of this right in accordance with their national law"

Social security legislation contains many pitfalls. A common one is that it fails to ensure that resources go to those most in need. Careful monitoring and planning is needed to surmount this difficulty. The Committee, for example, expressed concern at Nigeria's weaknesses in collecting and evaluating information:

"In view of the high proportion of children living in poverty in the State Party, the Committee notes with concern the lack of reliable information regarding the coverage of the social security plans in place vis-à-vis the needs of children and their families. The Committee reiterates that such data is crucial for the monitoring and evaluation of progress achieved and impact assessment of policies with respect to children. The Committee is also concerned that the social security system currently in place in the State Party is not in full compliance with article 26 of the Convention.
"The Committee recommends that the State Party:
(a) Upgrade its system of data collection on the coverage of the social security plans currently in place, and ensure that all data and indicators are used to evaluate and revise these plans whenever necessary; and
(b) Make efforts to revise or/and establish a social security policy along with a clear and coherent family policy in the framework of poverty reduction strategy, as well as effective strategies for using the social safety net benefits to further the rights of children."
(Nigeria CRC/C/15/Add.257, paras. 59 and 60)

States must also anticipate the possibility of cyclical recessions or financial crises and lay contingency plans for protecting their most important asset: children. Article 26 also implies that States Parties must take active measures to ensure that there is full take-up of social security entitlements where appropriate for or on behalf of children. Resources should therefore be given to public information campaigns on benefit entitlements, effective administrative systems and "applicant-friendly" benefit offices, forms and procedures. Article 26 is not prescriptive as to how social security should be delivered, but States must ensure that everyone who is entitled to receive it is able to do so without discrimination or social stigma or loss of any other right and with respect for their privacy.

The Committee's examination of States' implementation of article 26 often reveals discrimination in the delivery of social security, for example:

"The Committee notes that the limits for receiving social benefits for children are extended beyond the age of 18 years for persons attending full-time education; however, it notes that the age is not the same for males and females.
"The Committee encourages the State Party to ensure that social benefits for girls and boys are equal so that this is not a factor in their decisions relating to higher education." *(Cyprus CRC/C/15/Add.205, paras. 49 and 50)*

"The Committee takes notice of the reform of the family allowance system, including an evident increase of benefits for children. The Committee remains concerned about the high number of families living in poverty and the even higher number of single-parent families, families with three or more children and families caring for a child with severe

disabilities. In particular the Committee is concerned about the predominance of the Roma population amongst the poor and the difficulty for this population to evade economic hardship because of unemployment, segregated settlements and educational deficits caused to a large extent by discrimination.
"The Committee recommends that the State Party:
(a) Thoroughly examine the effects of the new family allowance system with a view to ensure that every child enjoys the right to an adequate standard of living;
(b) Strengthen, if necessary, the efforts to improve the standard of living of disadvantaged children, particularly those living in single-parent families, families with three or more children and families caring for a child with severe disabilities; and
(c) Provide material assistance and support capacity-building programmes in order to protect children against the detrimental impact of deficient living conditions." (Hungary CRC/C/HUN/CO/2, paras. 45 and 46)

"The Committee ... remains concerned at the large number of children who do not benefit from social security, such as children of unemployed or self-employed parents." (Mexico CRC/C/MEX/CO/3, para. 54)

In addition, children may be unable to claim because they are deemed "too old" (see article 1, definition of the child, page 3). The Committee raised this issue with Iceland and Georgia:

"Noting that a child is defined as a person under 18 years in Icelandic legislation (e.g. the 1997 Majority Act), the Committee is concerned that inconsistencies with this definition remain in other laws (e.g. child benefits are payable until age 16)." (Iceland CRC/C/15/Add.203, para. 20)

"The Committee ... regrets that social benefits for children with disabilities are discontinued when they reach 16 years." (Georgia CRC/C/15/Add.222, para. 52)

"... taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child"

The Convention underlines the financial as well as caring responsibilities of parents and others with child-rearing responsibilities. Article 27(4) specifically provides for the State to recover maintenance when necessary (see page 401).

In addition, means-testing of child social security is generally regarded as desirable, given the need to target limited resources effectively. It should, however, be noted that some degree of financial support for **all** children, regardless of their parents' circumstances, is neither unreasonable nor unviable. The State has good cause to invest in children, since they represent its future security, and families with children can be encouraged and supported by tax rebates or direct benefits. Universal benefits to all children have the added advantage of ensuring full take-up rates with very low administrative costs, since no means-testing is involved.

Where benefits are means-tested, great care has to be taken to ensure that the eligibility terms are non-discriminatory and non-stigmatizing to the families concerned.

Applications for benefits to be made "by or on behalf of the child"

This right emphasizes the fact that while it is important to ensure that those with legal responsibility for children are entitled to claim benefits on their behalf, it is equally important to ensure that children are directly eligible in their own right where necessary. The Netherlands entered a reservation to article 26, relating to this aspect: "The Kingdom of the Netherlands accepts the provisions of article 26 of the Convention with the reservation that these provisions shall not imply an independent entitlement of children to social security, including social insurance." (CRC/C/2/Rev.8, p. 31) In its Initial Report, the Netherlands indicated that: "Although, in the Netherlands, a child may in certain circumstances (in its capacity as employee or resident) have an individual entitlement to social security benefits, what tends to happen in practice is that the child's rights to social security are derived from those of the parents," and therefore indicated it would not withdraw the reservation. (Netherlands CRC/C/51/Add.1, para. 223) Nevertheless, the Committee encouraged withdrawal of this reservation (Netherlands CRC/C/15/Add.114, para. 7 and CRC/C/15/Add.227, paras. 10 and 11).

The need for an autonomous claim by the child may occur if parents are for some reason disqualified from claiming or are unable to claim.

The Committee noted such a problem in Lebanon, suggesting:

"... that a health insurance card be issued for children whose parents are not entitled to social security benefits." (Lebanon CRC/C/15/Add.54, para. 34)

It expressed concern that in Greece:

"... the system of financial 'allowances' provided by the State to assist in the care of children under certain circumstances, such as low family income, are not provided to children themselves but rather to mothers, irrespective of whether they are caring for their children;...
"... the Committee recommends that the State Party... amend the procedures for the disbursement of family allowances to ensure that this financial support is provided to the person(s) currently caring for the children intended to benefit from the allowances..."
(Greece CRC/C715/Add.170, paras. 48 and 49)

Children's access to benefits need not – arguably, should not – be dependent only on their adult caregivers. Denmark, for example, places a duty on "persons in public offices or public service" to inform the relevant authorities if they believe that anybody, including children, may be in need of social assistance (Denmark CRC/C/8/Add.8, para. 50). Norway reported that it made provision for older children to apply directly for social assistance in special circumstances, such as not receiving the necessary support from their parents (Norway CRC/C/70/Add.2, para. 273).

It should also be noted that flawed social benefit systems for adults can have unintended consequences for children, as the Committee pointed out to China when examining its Initial Report:

"It is the Committee's view that inadequate measures taken in the field of social security may have led to an over-reliance on children providing future care and support to their parents. This may have contributed to the perpetuation of harmful traditional practices and attitudes such as a preference for boys, to the detriment of the protection and promotion of the right of girls and disabled children...
"It is the Committee's view that remedial measures should be sought to avoid families' over-dependence on their children, in particular providing them with care in their old age." *(China CRC/C/15/Add.56, paras. 12 and 32)*

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 26, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 26 is relevant to the **departments of social security, finance, employment, justice, housing and social welfare**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 26 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 26 likely to include the training of **benefits administrators, social workers and the judiciary**)?

• Specific issues in implementing article 26

- ☐ Does every child in need have a potential right to benefit from social security (including social insurance)?
- ☐ Are measures taken to ensure that legal entitlements to social security are made known to children and their families?
- ☐ Are measures taken to ensure that take-up of benefits is made as easy as possible (for example by automatic payments, simple application forms, accessible benefit offices and officers)?
- ☐ Are measures taken to ensure that the process of applying for benefits does not discriminate against any children (for example those in remote areas or of illiterate parents)?
- ☐ Do systems for the delivery of social security respect the child's right to privacy?
- ☐ Are children able to make applications for social security in their own right?

How to use the checklist, *see page XIX*

- ☐ Are those responsible for children's maintenance able to make applications on their behalf?
- ☐ Are third parties (that is, those not directly responsible for children's maintenance) able to make applications on their behalf?

Reminder: **The Convention is indivisible and its articles interdependent. Article 26 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 26 include:

Article 3(2): State to ensure child necessary protection and care
Article 18: parents having joint responsibility
Article 23: rights of children with disabilities
Article 24: right to health care services
Article 27: right to an adequate standard of living and to maintenance from parents and others
Article 28: right to education

Child's right to an adequate standard of living

Text of Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Summary

Article 27 provides children with the right to an adequate standard of living for their full development. Parents have primary responsibility for securing this right; States must if necessary assist parents in doing so and in cases of need must provide material supports to the child, such as food, clothing and housing. States shall also take appropriate measures to recover maintenance from parents.

Article 27 links two essential principles of the Convention on the Rights of the Child, also found in other articles. The first, set out in paragraph (1) of article 27, is the right of each child to "development", which, as the Convention elsewhere makes clear, must be to "the maximum extent" (article 6) or to the child's "fullest potential" (article 29). The second, set out in paragraphs (2) and (4) of article 27, is that parents have primary responsibility for securing this development, with

the assistance of the State. This principle is also asserted in articles 5, 7 and 18.

Article 27 recognizes that the child's development cannot be divorced from his or her conditions of living. By listing the different components of full development – physical, mental, spiritual, moral and social – article 27 makes clear that an adequate standard of living is not just limited to the basics of food, clothing and housing, important though these are. There are very few countries that have reported to the Committee that can claim to be using their available resources to the maximum extent possible to alleviate child need – some of the wealthiest nations of the globe have children experiencing unacceptable levels of deprivation. ■

Background

The Universal Declaration of Human Rights provides that: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." (Article 25)

The International Covenant on Economic, Social and Cultural Rights develops this: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement to living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent." (Article 11(1))

The reporting guidelines for the Covenant, with particular reference to "the continuous improvement of living conditions", asks countries to report on whether the standard of living of all social groups has improved over time, for example over the last five or ten years. It also asks for reports on the per capita GNP of the poorest 40 per cent and for information on any "poverty line" definition, as well as for a great deal of detailed information about the "food security" of the population and the country's housing situation (*Manual on Human Rights Reporting,* 1997, p. 120).

The Committee on Economic, Social and Cultural Rights has also made a significant General Comment in relation to the nature of States Parties' obligations, quoted at length in article 4 (page 52). This accepts that not all countries will be able to meet economic and social rights in full, a fact which is explicitly recognized in the Convention on the Rights of the Child). However the goal of full implementation is set and the Covenant on Economic, Social and Cultural Rights "... imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources...

"... the Committee [on Social, Economic and Cultural Rights] is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State Party. Thus, for example, a State Party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or even of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant..." (Committee on Economic, Social and Cultural Rights, General Comment No. 3, 1990, HRI/GEN/1/Rev.8, para. 10, p. 17)

When examining States' reports, the Committee on the Rights of the Child sometimes expresses support for particular findings of the Committee on Economic, Social and Cultural Rights, recognizing its particular expertise in analysing levels of poverty and imbalances in the distribution of resources.

"... the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development"

Article 6, identified by the Committee as one of the Convention's general principles, gives States the responsibility to "ensure to the maximum extent possible the survival and development of the child". Article 27(3) spells out three vital contributions to children's physical development – nutrition, clothing and housing. Article 24 enlarges on these, for example stressing the need for clean drinking water, health education, good hygiene and sanitation, breastfeeding, and preventive action in relation to environmental pollution, child accidents and harmful traditional practices. Articles 29 and 31 focus on children's rights to have opportunities to develop their physique, amongst other things, through sport

and play – perhaps particularly important for urban children.

The civil rights of children under articles 12 to 17, the rights to enjoy their culture and religion within the security of family and community (articles 5, 7, 8, 9, 18, 20, 21 and 30) and the aims of education in article 29, all contribute to the development of children's social, moral, mental and spiritual development.

In its General Comment No. 7 on "Implementing child rights in early childhood", the Committee observes:

"The Committee notes with concern that even the most basic standard of living is not assured for millions of young children, despite widespread recognition of the adverse consequences of deprivation. Growing up in relative poverty undermines children's well being, social inclusion and self esteem and reduces opportunities for learning and development. Growing up in conditions of absolute poverty has even more serious consequences, threatening children's survival and their health, as well as undermining the basic quality of life. States Parties are urged to implement systematic strategies to reduce poverty in early childhood as well as combat its negative effects on children's well being. All possible means should be employed, including 'material assistance and support programmes' for children and families (art. 27(3)), in order to assure to young children a basic standard of living consistent with rights. Implementing children's right to benefit from social security, including social insurance, is an important element of any strategy..." (Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 26)

"The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development"

The primary responsibility of parents and other carers to meet the child's needs reflects the principles stated in article 3(2), article 5 and article 18. Where provision for the child's development is concerned under article 27, parental responsibility is expressly qualified by the proviso "within their abilities and financial capacities". This is an important reminder that, where parents lack the requisite skills or resources, the State must assist the parents in meeting their responsibilities, including the provision of material assistance such as food, clothing and housing. The Committee commented to the Democratic Republic of the Congo that:

"The Committee agrees with the State Party in expressing deep concern that the State seems increasingly to be shifting its duties and responsibilities onto parents and persons effectively or legally responsible for a child's upbringing..." (Democratic Republic of the Congo CRC/C/15/Add.153, para. 36)

As discussed below, in relation to maintenance under paragraph 4 of article 27 (page 401), legislation can be very precise about what is expected from parents by defining "parental responsibility" in law in terms of meeting the child's material, emotional, developmental and intellectual needs. That such legislation might be hard to enforce is not the point; the law has an important educational function as well.

"States Parties, in accordance with national conditions and within their means..."

When parents are unable to ensure an adequate standard of living for their child, the State should step in. Article 27 also puts explicit qualifications on the State's obligations – "in accordance with national conditions and within their means". These words reflect a general nervousness of governments about financial commitments and control over government expenditure (including wealthy governments – it was the delegate of the United States of America who introduced the phrase "in accordance with national conditions" and the United Kingdom delegate, "within their means" (E/CN.4/1985/64, pp. 8 to 10; Detrick, pp. 374 and 375)). However, it is doubtful whether these qualifications dilute the overarching obligation to meet the economic rights of the child "to the maximum extent of ... available resources" under article 4. "Available" implies "in accordance with national conditions and within... means". Certainly no country has yet argued to the Committee that the provisions of article 4 do not apply to rights under article 27.

The recession in the first half of the 1990s, together with the structural adjustment of countries making a transition to a market economy, brought restraints on public expenditure everywhere. The result was an increasing impoverishment of children from population groups dependent on state aid for their survival. Some of the more extreme economic policies have now been reconsidered by international donors and financial institutions.

The 2002 United Nations General Assembly's special session on children confirmed that national and international economic measures must focus

on poverty reduction, and that the market must not operate to the detriment of children. States resolved to:

"Mobilize new and substantial additional resources for social development, both at national and international level, to reduce disparities within and among countries, and ensure the effective and efficient use of existing resources. Further, ensure to the greatest possible extent, that social expenditures that benefit children are protected and prioritized during both short-term and long-term economic and financial crises." (United Nations, Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, para. 52)

Concern about disparities in wealth is also reflected in the Committee's Concluding Observations, for example in relation to Brazil and Colombia:

"While taking into account the high priority given by the State Party in implementing policies and programmes with a view to fighting hunger and poverty, the Committee notes that Brazil is a country with a relatively high level of development, and shares the concerns of the Committee on Economic, Social and Cultural Rights related to the persistent and extreme inequalities and imbalances in the distribution of wealth and resources … The Committee is concerned that the lives of a great number of children are marked by poverty, difficult access to, and deficient quality of, public services." (Brazil CRC/C/15/Add.241, para. 56)

"The Committee is seriously concerned over the growing gaps in the standard of living and the increasing number of children living in poverty or extreme poverty, also evidenced through the rising Gini coefficient, an international standard used to measure levels of inequality… The inequalities in the standard of living present a serious obstacle to the equal enjoyment of the rights in the Convention.
"The Committee recommends that the State Party prioritize and allocate sufficient funds in order to counteract the increasing inequality and effectively reduce the discrepancies in the standard of living, inter alia, *between urban and rural areas…"* (Colombia CRC/C/COL/CO/3, paras. 65 and 66)

An important element of the Committee's recommendations in relation to article 27 is that countries – both rich and poor – should undertake holistic analyses of the extent, origin and cross-relationships of all forms of child deprivation. Poverty should be mapped and its root causes addressed. For example:

"… the Committee recommends that the State Party engage NGOs in dialogue, especially organizations working with family and children's issues, and civil society in general, in the development of social policies in order to better understand the reasons for exclusion and to stimulate new ideas to raise the standard of living of vulnerable groups of children." (Hungary CRC/C/HUN/CO/2, para. 47)

"In the light of article 27 of the Convention, the Committee recommends that the State Party:
(a) Continue to take measures to raise the standard of living among its population, particularly rural populations living in poverty and those living in urban 'poverty pockets', for example, through formulating and implementing a comprehensive and time-bound national development strategy and social programmes aiming at reducing poverty and strengthening community development;
(b) Consider preparing a poverty reduction strategy with special emphasis on vulnerable children and their families, and strengthen community mobilization, including the participation of children, for poverty reduction at the local level; and
(c) Strengthen its efforts to provide support and material assistance to disadvantaged children and their families." (Lebanon CRC/C/LBN/CO/3, para. 62)

Governments must also ensure that corruption or corporate interests do not undermine effective social services:

"… the Committee shares the concerns of the Committee on Economic, Social and Cultural Rights… that the inadequacy of the social safety nets during the restructuring and privatization process has negatively affected the enjoyment of economic, social and cultural rights, disproportionately affecting the most disadvantaged and marginalized groups.
"The Committee recommends that the State Party ensure that the provisions of the Convention are taken into account in the privatization process and that all children residing on the territory of the State Party equally enjoy social benefits." (Czech Republic CRC/C/15/Add.201, paras. 52 and 53)

"The Committee is also concerned at reports of widespread practices of corruption, which are believed to have an adverse effect on the level of resources available for the implementation of the Convention.
"The Committee recommends that the State Party… take all measures to investigate allegations of practices of corruption and to prevent and eradicate corruption." (Uzbekistan CRC/C/UZB/CO/2, paras. 52 and 53)

The Committee does not underestimate the responsibilities of the donor community, for example in relation to Bolivia. In responding to its Initial Report the Committee observed:

"The Committee notes that economic factors, including a high level of external debt, have made the full application of the Convention more difficult. In this respect, the Committee notes with concern that the long-term considerations embodied in many structural adjustment policies have not adequately taken into account the needs of today's children. While the State is responsible for implementation of the Convention on the Rights of the Child, the Committee recognizes that additional international assistance will be needed to more effectively address the challenge of improving the situation of children living in poverty, particularly those from the rural areas of the country." (Bolivia CRC/C/15/Add.1, para. 5)

By the time Bolivia submitted its Second Report, international financial institutions had introduced a process to provide debt reduction to some of the poorest countries :

"While the Committee is aware of the efforts undertaken by the State Party to allocate substantial financial resources for the benefit of children, it reiterates its concern … that the stringent budgetary measures and external debt, as well as the persistence of widespread poverty and uneven income distribution, are still having a negative impact on the situation of children in the State Party… the Committee encourages the State Party … to continue ensuring that sufficient budgetary allocation is provided to social services for children and that particular attention is paid to the protection of children belonging to vulnerable and marginalized groups … the Committee encourages the State Party to continue with its efforts to reduce the burden of its external debt, including the measures taken within the framework of the World Bank/International Monetary Fund's initiative 'Highly Indebted Poor Countries'." (Bolivia CRC/C/15/Add.95, para. 15)

While the Committee may commend energetic action taken by richer nations to reduce poverty, it will still encourage more action, as with Canada:

"The Committee is concerned by the emerging problem of child poverty, especially among vulnerable groups. It is also worried by the increasing number of children who are brought up by single-parent families, or in other problematic environments. While appreciating the programmes already set up, the Committee emphasizes the need for special programmes and services to provide the necessary care, especially in terms of education, housing and nutrition, for such children...
"While recognizing the steps already taken, the Committee notes with concern the special problems still faced by children from vulnerable and disadvantaged groups, such as aboriginal children, with regard to the enjoyment of their fundamental rights, including access to housing and education." (Canada CRC/C/15/Add.37, paras. 12 and 17)

"States Parties ... shall take appropriate measures to assist parents and others responsible for the child ... and shall in case of need provide material assistance and support programmes..."

Article 27's emphasis on the State assisting parents in the exercise of their primary responsibility to secure children's living conditions, rather than directly assisting the child, is both self-protective and principled: self-protective, because the drafting nations were anxious not to be placed under duties to support the children of rich parents, or to allow parents generally to offload their responsibilities onto the State; principled, because – as the Convention stresses – children have a right wherever possible to be cared for by their parents and kept within a family environment. Article 27 reaffirms the principle established in article 18 that while both parents have primary responsibility for their children, the State also has obligations to support parents in the role of protecting and promoting the well-being of their children.

The Committee has expressed concern that States might not recognize that some parents were unable to undertake their responsibilities and needed support:

"... Further steps should be taken to strengthen the system of assistance to both parents in the performance of their child-rearing responsibilities, in particular in the light of articles 18 and 27 of the Convention. It is further suggested that the problem of single parenthood be studied and that relevant programmes be established to meet the particular needs of single parents." (Poland CRC/C/15/Add.31, para. 33)

"The Committee welcomes the adoption of the Preliminary Poverty Reduction Strategy in April 2002 and other efforts to support families, but remains concerned at the deteriorating living standards affecting in particular families with children, the inadequate social security system and the large number of parents migrating abroad to find work.
"The Committee recommends that the State Party:
(a) Undertake all necessary measures to support parents and families, including single-parent families, in their child-rearing responsibilities as part of its full implementation of the National Strategy for Children and Families;

(b) Fully implement the Preliminary Poverty Reduction Strategy, inter alia *with a view to providing an adequate level of food security and social protection for children at risk and to improving and making transparent the payments of allowances to families with children."* *(Moldova CRC/C/15/Add.192, paras. 39 and 40)*

Support for parents is also discussed under articles 18 and 26 (see pages 237 and 386).

"particularly with regard to nutrition"

In 1999 the Committee on Economic, Social and Cultural Rights issued a General Comment on the right to adequate food. This affirms that the right to adequate food under article 11 of the International Covenant on Economic, Social and Cultural Rights is "indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights enshrined in the International Bill of Human Rights". The Committee on Economic, Social and Cultural Rights defines the core content of the right to adequate food supplies as implying: "The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights." The General Comment provides detailed discussion of the implications of implementation (Committee on Economic, Social and Cultural Rights, General Comment No. 12, 1999, HRI/GEN/1/Rev.8, para. 8, p. 65).

The World Summit for Social Development (Copenhagen, 1995) agreed the goal of: "Achieving food security by ensuring a safe and nutritionally adequate food supply, at both the national and international levels, a reasonable degree of stability in the supply of food, as well as physical, social and economic access to enough food for all, while reaffirming that food should not be used as a tool for political pressure" (World Summit for Social Development, Programme of Action, A/CONF.166/9, p. 51). The World Summit follow-up General Assembly special session, five years later, reported that the goal of reducing malnutrition in under-fives by 2000 had not been achieved (United Nations General Assembly, twenty-fourth special session, 2000, A/RES/S-24/2, p. 5). The 2006 report on the Millennium Development Goals also reported little real progress in reducing hunger (*The Millennium Development Goals Report 2006,* United Nations Department of Economic and Social Affairs, DESA, New York, June 2006, pp. 4 and 5).

The United Nations General Assembly's special session on children in 2002 resolved to reduce the rate of low birthweight and child malnutrition among children under five by at least one third before 2010 (Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, para. 36).

The Committee on the Rights of the Child has expressed deep concern at any evidence of child malnutrition. Children will fail to make any significant progress in their "physical, mental, spiritual, moral and social development" if they are malnourished, so nutrition will always be at the top of any list of priorities for children.

Where children are threatened with malnutrition, the Committee has on occasion recommended a "National Nutritional Policy for children", for example:

"Further steps should be taken in the area of health and welfare services. In particular concerted efforts are needed to combat malnutrition and ensure the implementation of a National Nutritional Policy for children." *(Bangladesh CRC/C/15/Add.74, para. 41)*

However, the Committee often subsumes malnutrition under general concerns about "poverty" and "health" in relation to impoverished groups of children (see article 24(2)(c), page 357). This may occur because no evidence has been submitted to it on child malnutrition – the country may have failed to amass data on, for example, birthweight or infant undernourishment. Thus, the Committee advised Guatemala:

"... The Committee shares the concern expressed by the representative of the State Party at the widespread severe malnutrition and at the inadequacies of data and statistics monitoring nutrition." *(Guatemala CRC/C/15/Add.58, para. 17)*

"housing"

The 2002 United Nations General Assembly's special session on children declared:

"Adequate housing fosters family integration, contributes to social equity and strengthens the feeling of belonging, security and human solidarity, which are essential for the well-being of children. Accordingly, we will attach a high priority to overcoming the housing shortage and other infrastructure needs, particularly for children in marginalized peri-urban and remote rural areas" (A/S-27/19/Rev.1, para. 27).

In the same year the Commission on Human Rights appointed a Special Rapporteur on Adequate Housing, who visits countries, works with government and other bodies and reports to the Commission on housing rights.

The Committee on Economic, Social and Cultural Rights issued a long General Comment on the right to adequate housing under article 11 of the Covenant, which details requirements such as security of tenure, availability of basic services, affordability and accessibility of housing (Committee on Economic, Social and Cultural Rights, General Comment No. 4, 1991, HRI/GEN/1/Rev.8, para. 8, p. 20). It also issued a General Comment specifically on forced evictions, pointing out that evictions frequently violate people's rights even when they are justifiable, and in particular have a disproportionate impact on children and other vulnerable individuals (Committee on Economic, Social and Cultural Rights, General Comment No. 7, 1997, HRI/GEN/1/Rev.8, para. 10, p. 48). General Comment No. 4 was endorsed by the Committee on the Rights of the Child in its Statement to the Second United Nations Conference on Human Settlements (Habitat II, Istanbul, 1996) supporting the Expert Seminar on children's rights and housing (see box). The Committee commented:

"The Committee believes that... the right to housing should not be interpreted in a narrow

Children's rights and housing

In February 1996, a group of experts from UNICEF, the United Nations Centre for Human Settlements (UNCHS) and others met to establish the relevance of the Convention on the Rights of the Child to the goals of Habitat II. Their declaration includes the following:

"Within the home environment

- The child's need for a secure, safe, healthy environment begins in the prenatal period.
- A healthy home includes a safe and sufficient water supply, safe and accessible sanitation and waste management; also protection from traffic and other hazards, freedom from exposure to pollution, radiation and disease, and from excessive noise and overcrowding.
- The home environment should facilitate caregiving, and should meet children's basic physical, social and psychological needs.
- Children of both sexes should be provided with equal opportunities and challenges for play and learning in the home and its immediate surroundings.
- Particular attention should be given to the home-based needs of disabled and other vulnerable children.

Within the neighbourhood and community

- A supportive environment for children includes healthy, crime free, and peaceful communities. It is essential that conditions promote social justice, gender equality and participation in community life.
- Childhood and adolescence must be recognized as unique stages in human cultural development, requiring the respect and understanding of the community and society. Street children and others in difficult circumstances should not be excluded.
- Health care, education, and child-care services of high quality must be available and accessible within the community.
- It is essential that children have safe, secure, and protected environments within the community where they can play, participate and learn about their social and natural world. Adolescents, too, need places where they can be together, experience autonomy, and feel a sense of belonging.
- Children have a special interest in the creation of sustainable human settlements that will support long and fulfilling lives for themselves and future generations. They require opportunities to participate and contribute to a sustainable urban future."

(Children's Rights and Habitat – Declaration and Report of the Expert Seminar, UNICEF, UNCHS/Habitat, 1996)

or restrictive sense, but has to be interpreted as a right to live somewhere in security, peace and dignity...
"It is important to emphasize that the rights to housing of children are interrelated to and interdependent with nearly every other right contained in the Convention. This underlines the comprehensive and holistic thrust of the Convention, as well as of its process of implementation and monitoring." (Committee on the Rights of the Child, Report on the eleventh session, January 1996, CRC/C/50, pp. 77 and 79)

The Committee has occasionally asked countries to report on what measures they have taken under Habitat II. For example it raised the issue, as well as concerns about forced evictions, with India:

"The Committee is concerned at the high percentage of children living in inadequate housing, including slums, and their inadequate nutrition and access to safe drinking water and sanitation. The Committee is concerned at the negative impact on families and the rights of children of structural adjustment projects.
"In accordance with article 27 of the Convention, the Committee recommends that the State Party take appropriate measures to give effect to its commitments made at Habitat II in 1996 regarding children's access to housing. In the light of Commission on Human Rights resolution 1993/77 on forced evictions, the Committee encourages the State Party to prevent any occurrence of forced relocation, displacement and other types of involuntary population movements. The Committee recommends that resettlement procedures and programmes include registration, facilitate comprehensive family rehabilitation and ensure access to basic services." (India CRC/C/15/Add.115, paras. 52 and 53)

The Committee returned to this concern when India submitted its Second Report:

"In spite of the growth of the gross domestic product, the Committee is concerned about the widespread poverty in the State Party and the still high number of children who do not enjoy the right to an adequate standard of living, including access to clean drinking water, adequate housing and latrines. The Committee is further concerned at the negative consequences of displacement and rehabilitation projects which intend to improve living conditions but which remove children from their habitat to a new environment often not prepared for children's needs.
"In accordance with article 27 of the Convention, the Committee recommends that the State reinforce its efforts to provide support and material assistance to economically disadvantaged families and to guarantee the right of children to an adequate standard of living. In the light of its previous recommendations (Ibid., para. 53), the Committee further recommends that the State Party prevent any occurrence of forced relocation, displacement and other types of involuntary population movements." (India CRC/C/15/Add.228, paras. 62 and 63)

In its Statement to Habitat II, the Committee mentions children's right to participate in decisions relating to housing (article 12). Although "housing" is singled out in article 27, any consideration of housing has to encompass the whole of the built environment – children's needs and views are equally crucial in relation to areas used primarily by them, such as schools, play areas, residential institutions, clinics and hospitals.

Habitat II declares: "The needs of children and youth, particularly with regard to their living environment, have to be taken fully into account. Special attention needs to be paid to the participatory processes dealing with the shaping of cities, towns and neighbourhoods; this is in order to secure the living conditions of children and of youth and to make use of their insight, creativity and thoughts on the environment. Special attention must be paid to the shelter needs of vulnerable children, such as street children, refugee children and children who are victims of sexual exploitation." (United Nations Conference on Human Settlements (Habitat II), A/CONF.165/14, p. 15)

Detailed information by countries on the housing situation of children or detailed comment by the Committee is rare but occasionally arises, for example in relation to Kyrgyzstan and Latvia:

"The Committee... is... concerned that migrants with no formal residence permits also live in very precarious housing conditions, without access to basic infrastructure and in fear of forced eviction." (Kyrgyzstan CRC/C/15/Add.244, para. 63)

"The Committee recognizes that children and their families are severely impacted by the economic and social transformation process that was initiated after Latvia regained independence... The Committee is, however, particularly concerned that assistance to families is not sufficient to prevent the circumstances related to evictions of families with children from their places of residence by court order, which often further deteriorates the living conditions of children and their families...
"The Committee recommends that the State Party ensure that ... Disadvantaged families are provided with adequate and affordable housing, and that adequate alternative housing arrangements are available in the event of their evictions." (Latvia CRC/C/LVA/CO/2, paras. 48 and 49)

In addition the Committee has consistently expressed concern about the group of children termed "street children", whom, following the recommendation of the Human Rights Commission (resolution 1994/93), it prefers to describe as: "children who, in order to survive, are forced to live and/or work on the streets". Though many such children have families with whom they are in touch, they often do not live with them and are forced to sleep on the streets or in unacceptable forms of accommodation. This topic is discussed in article 20 (page 286).

While homelessness is common in poor countries, it is also prevalent in many of the most prosperous countries, for example Canada:

"The Committee is encouraged to learn that homelessness was made a research priority by the Canada Mortgage and Housing Corporation, as the sources of data are limited. However, the Committee shares the concerns of the Committee on Economic, Social and Cultural Rights ... which noted that the mayors of Canada's 10 largest cities have declared homelessness to be a national disaster and urged the Government to implement a national strategy for the reduction of homelessness and poverty." (Canada CRC/C/15/Add.215, para. 40)

The child's right to maintenance: article 27(4)

The provisions of article 27(4), relating to the financial maintenance of children by parents and others legally responsible for them, are undoubtedly important for many children whose conditions of living can be greatly improved by recovery of maintenance from an absent parent (usually the father).

However, maintenance is a muddied issue – this "right of the child" can be used in a way that is not necessarily in the child's interests. For example, fathers can use financial leverage to secure unwanted access to the child or to assert a greater right to determine the child's future; mothers can retain custody of children simply in order to secure financial support or accommodation for themselves; children of second families can sometimes be the unnoticed victims of maintenance orders. States, too, can be unscrupulous about pursuing maintenance simply as a means of reducing their public expenditure bill. Care, therefore, needs to be taken to emphasize the principle of article 3, that the best interests of the child must be a primary consideration (ideally the paramount consideration) when maintenance legislation and procedures are drawn up.

Nonetheless, the maintenance of children often carries wider social benefits than simply improving the living standards of individual children. In particular it addresses the increasingly important issue of the absent father and the worldwide growth of female-headed single-parent families (both unmarried and divorced), discussed under article 18 (see page 235). Good maintenance recovery procedures can deter men from taking irresponsible attitudes to family planning and fatherhood, and can encourage them to play a more active role in children's upbringing.

The Committee expressed concern to Côte d'Ivoire and Zambia that, despite the existence of legal provisions for maintenance, there was widespread ignorance of the law:

"The Committee recommends that the State Party make widely known the provisions of domestic legislation concerning maintenance allowance, notably to women who are illiterate, and that it ensure that professional groups dealing with this issue are adequately trained and that the courts are stricter regarding the recovery of allowances from solvent parents who refuse to pay." (Côte d'Ivoire CRC/C/15/Add.155, para. 33)

"While domestic legislation includes provisions for maintenance allowance... the Committee is concerned at the lack of implementation of these provisions, mainly because of widespread ignorance of the law and limited enforcement of maintenance orders...
"The Committee recommends that the State Party:
(a) Make widely known the provisions of domestic legislation concerning maintenance allowance, especially among mothers who are illiterate, and to support them if necessary in understanding legal actions; and
(b) Ensure that professional groups dealing with this issue are adequately trained and courts implement more strictly the provisions regarding the recovery of allowances, particularly in case of solvent parents who refuse to pay..." (Zambia CRC/C/15/Add.206, paras. 40 and 41)

In addition, the Committee draws attention to any deficiencies in maintenance systems, for example regretting the long delays "sometimes lasting several years" that occur in the Ukraine (Ukraine CRC/C/15/Add.191, para. 42) and the discrimination against mothers of older children or against unmarried mothers in Saint Vincent and the Grenadines:

"Mothers are only able to claim child maintenance for a child aged over 5 if the claim process was initiated before the child reached the age of 5, and there are disparities between the child maintenance awards made to the children of unmarried

mothers (domestic court) and married mothers (magistrates court)." (Saint Vincent and the Grenadines CRC/C/15/Add.184, para. 30)

As well as improving procedures the Committee has suggested that the State provides a financial safety net while maintenance is sought, and that it should be possible to deduct maintenance from the responsible parent's salary:

"In the light of article 27 and the principle of the best interests of the child (art. 3), the Committee recommends that the State Party take all effective measures to enforce child maintenance obligations based on a court order or agreements between Parties in a manner that does not stigmatize the child or his or her custodial parent. For instance, the State Party might consider establishing a national fund to ensure payment of overdue child maintenance obligations to the custodial parent while enforcement measures are enacted, or introducing a system in which child support payments are automatically deducted from salaries of those employees with child maintenance obligations." (Republic of Korea CRC/C/15/Add.197, para. 47)

Legal definitions of 'maintenance' can also be a method of spelling out parental and family responsibilities. For example the Committee was informed that parents in Argentina are under a legal duty to meet their children's needs in terms of sustenance, education, leisure, clothing, housing, assistance and expenditure on account of illness (Argentina CRC/C/8/Add.2, paras. 56 to 58). The law on the duties of parents in Bolivia goes even further, specifying responsibility to ensure that children acquire a trade or profession for the future, if necessary by covering the cost of training (Bolivia CRC/C/3/Add.2, para. 99). Costa Rica's legislation establishes a precedence of financial responsibility for the child within the family – parents, elder siblings, grandparents and great-grandparents, in that order (Costa Rica CRC/C/3/Add.8, para. 155).

Recovery of maintenance from abroad. Article 27(4) was introduced during the drafting sessions of the Convention by Finland's representative in a draft that referred only to the effective recovery of maintenance from abroad, because of difficulties both children and States had experienced in this area. The recovery of maintenance from within the State was an afterthought (E/CN.4/1988/28, p. 17; Detrick, p. 378).

International conventions have established rules governing where, from whom and how children may claim maintenance in circumstances where children change their country of habitual residence and where one or both parents live or move abroad – these include the United Nations Convention on the Recovery Abroad of Maintenance (New York, 1956) and the Reciprocal Enforcement of Maintenance Orders, Hague Convention Countries Order 1993. In addition, there are a number of bilateral and regional treaties and reciprocal enforcement agreements relating to maintenance orders. In countries where there is a lot of fluidity across borders, it is particularly important for these agreements to be ratified and made easily enforceable.

With increasing numbers of women migrating from their home country to find work, the Committee has highlighted the need for effective and enforceable international maintenance agreements, for example to Belize and the Philippines:

"The Committee is concerned that recovery of maintenance is not sufficiently ensured in practice. It is concerned at the actual implementation and, in some cases, the absence of bilateral agreements for reciprocal enforcement of maintenance orders....
"In the light of article 27, paragraph 4, of the Convention, the Committee recommends ... that the State Party effectively implement and conclude bilateral agreements for reciprocal enforcement of maintenance orders and reconsider establishing a fund to provide support to parents waiting for the decision regarding the maintenance of their child." (Belize CRC/C/15/Add.252, paras. 44 and 45)

"While noting the high number of Philippine children with a parent or both parents working overseas, the increasing number of Philippine children born abroad during overseas migration and the cases where paternity has not been established, the Committee is concerned that the State Party has not sufficiently ensured the recovery of maintenance in practice. The Committee is concerned ... at the actual implementation of, and in some cases, the absence of bilateral agreements for reciprocal enforcement of maintenance orders.
"... As regards parent(s) working abroad, the Committee encourages the State Party to conclude bilateral agreements for reciprocal enforcement of maintenance orders and consider establishing a fund to secure the payment of maintenance in those cases where the recovery of maintenance fails." (Philippines CRC/C/15/Add.259, paras. 46 and 47)

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

article 27

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 27, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 27 is relevant to the **departments of justice, home affairs, housing, social welfare and housing**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 27 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 27 likely to include the training of **community developers, environmental planners, emergency aid personnel, court officers, social workers, health workers and those involved in parent education**)?

• Specific issues in implementing article 27

- ☐ Has the State identified the minimum standard of living necessary to secure the child's development?

Are appropriate measures taken to assist parents and others responsible for the child in securing the conditions of living necessary for the child's

- ☐ physical development?
- ☐ mental development?
- ☐ spiritual development?
- ☐ moral development?
- ☐ social development?

- ☐ Are measures taken to make parents fully aware of these responsibilities?
- ☐ Are legal or administrative criteria in place to determine whether parents have the ability and financial capacities to meet their responsibilities?

How to use the checklist, *see page XIX*

- ☐ Are measures and procedures taken in order to identify all children within the State who are in need because their parents are unable to secure adequate standards of living for them?
- ☐ Are measures adopted to analyze why children's conditions of living are insufficient for their proper development?
- ☐ Where children are in need, whether with their parents or otherwise, are they provided with necessary material assistance and support programmes to secure their proper development?
- ☐ Does the State take measures (including budgetary allocations) to ensure that every child is well nourished?

Does the State take measures to ensure that every child is housed in accommodation that is:

- ☐ secure?
- ☐ well-serviced (particularly as regards water, sanitation and fuel)?
- ☐ safe?
- ☐ healthy?
- ☐ appropriately located (particularly as regards hospitals, schools and recreation)?
- ☐ in accordance with measures recommended by Habitat II?

- ☐ Are the views of children taken into account when shaping the environment in which they live?
- ☐ Does the State take measures to ensure that every child is adequately clothed?
- ☐ Where the State has insufficient resources available to secure an adequate standard of living for all children, do its economic plans include securing such standards as an explicit goal?
- ☐ Are appropriate applications made for international aid and technical assistance where there are insufficient resources to secure children's standard of living?

Maintenance

- ☐ Is legislation implemented to ensure that children can recover maintenance from both parents and from any others who have responsibility for their conditions of living?
- ☐ Does such legislation make the child's best interests a primary or paramount consideration?
- ☐ Is such legislation simple and cheap for the child or child's caregiver to enforce?
- ☐ Does it include measures to obtain income or assets from those who default on their maintenance responsibilities?
- ☐ Has the State acceded to all appropriate international or bilateral agreements and treaties relating to the recovery of maintenance abroad?

How to use the checklist, *see page XIX*

Reminder: **The Convention is indivisible and its articles interdependent. Article 27 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 27 include:

Article 3(2): State to ensure child necessary protection and care, taking into account parents' rights
Article 5: parental responsibilities and child's evolving capacities
Article 18: parents having joint responsibility, state support for parents
Article 24: right to health and health services
Article 26: right to social security

UNICEF/C-88/Goodsmith

Child's right to education

Text of Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Summary

Article 28 of the Convention on the Rights of the Child establishes the child's right to education. This must be achieved "on the basis of equal opportunity", reflecting the fact that huge numbers of children suffer discrimination in access to education, particularly girls, children with disabilities, minorities and children from rural communities. Education is expensive and elements of the right may need to be achieved

"progressively". However, article 28 states the core minimum: free, compulsory primary education for all, and different forms of secondary education and vocational guidance "available and accessible" to all. Higher education must be accessible "on the basis of capacity".

The article also addresses the form of education, in so far as States must take measures to reduce school drop-out rates and to ensure that school discipline respects the child's rights. It also encourages international cooperation on education, which should be readily forthcoming, given education is both a core human right and an engine for economic growth. ■

Background

The 1948 Universal Declaration of Human Rights states: "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit" (article 26).

This Declaration was enhanced in the International Covenant on Economic, Social and Cultural Rights: "Primary education shall be compulsory and available free to all; secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education" (article 13(2)). The International Covenant goes on to provide that any ratifying State that does not provide free compulsory primary education shall undertake "within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all" (article 14). During the drafting of article 28 on the Convention on the Rights of the Child, concern was expressed by State representatives that the Convention should neither be weaker nor stronger than the International Covenant on Economic, Social and Cultural Rights (E/CN.4/1985/64, pp. 11 to 15; Detrick, pp. 383 to 386). In 1999, the Committee on Economic, Social and Cultural Rights adopted two General Comments on education – General Comment No. 11 on plans of action for primary education (article 14 of the Covenant) and General Comment No. 13 on the right to education (article 13 of the Covenant).

The 1990 World Summit for Children declared: "At present, over 100 million children are without basic schooling, and two thirds of them are girls. The provision of basic education and literacy for all is among the most important contributions that can be made to the development of the world's children" (para. 13). The World Summit set a goal: "By the year 2000 ... universal access to basic education and achievement of primary education by at least 80 per cent of primary school-aged children". That goal was not achieved. A decade later, noting that at least 113 million children were still out of school, world leaders set a new goal: "to achieve universal primary education".

The United Nations *Millennium Development Goals Report 2006* report shows there has been some progress towards this goal:

"Net enrolment ratios in primary education have increased to 86 per cent in the developing world, ranging from 95 per cent in Latin America and the Caribbean to 64 per cent in sub-Saharan Africa. Although the sub-Saharan region has made significant progress since 1990/1991, in Burkina Faso, Djibouti, Eritrea, Ethiopia, Mali and Niger, fewer than half the children of primary school age are enrolled in school. Faster progress will also be needed if Oceania and Western Asia are to achieve universal education. Southern Asia, in contrast, has made great strides, especially over the period 1999-2004, when enrolment rose from 72 to 89 per cent – largely as a result of progress in India." (*The Millennium Development Goals Report 2006,* United Nations Department of Economic and Social Affairs, DESA, New York, June 2006, p. 6. See also www.mdgs.un.org.)

The 1990 World Declaration on Education for All (the "Jomtien Declaration") states: "Every person – child, youth and adult – shall be able to benefit from educational opportunities designed to meet his basic learning needs. These needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to improve the quality of their lives, to make informed decisions, and to continue learning" (article 1(1)). In 2000 the World Education Forum, held in Dakar, set out a framework for state action on achieving education for all. The 2002 General Assembly's special session on children endorsed Dakar, recognizing the central importance of education.

General Assembly targets and strategies for education: An education system fit for children

"As agreed at the World Education Forum in Dakar, which reconfirmed the mandated role of the United Nations Educational, Scientific and Cultural Organization in coordinating Education For All partners and maintaining their collective momentum within the process of securing basic education, we will accord high priority to ensuring by 2015 that all children have access to and complete primary education that is free, compulsory and of good quality. We will also aim at the progressive provision of secondary education. As a step towards these goals, we resolve to achieve the following targets:

(a) Expand and improve comprehensive early childhood care and education, for girls and boys, especially for the most vulnerable and disadvantaged children;

(b) Reduce the number of primary school-age children who are out of school by 50 per cent and increase net primary school enrolment or participation in alternative, good quality primary education programmes to at least 90 per cent by 2010;

(c) Eliminate gender disparities in primary and secondary education by 2005; and achieve gender equality in education by 2015, with a focus on ensuring girls' full and equal access to and achievement in basic education of good quality;

(d) Improve all aspects of the quality of education so that children and young people achieve recognized and measurable learning outcomes especially in numeracy, literacy and essential life skills;

(e) Ensure that the learning needs of all young people are met through access to appropriate learning and life skills programmes;

(f) Achieve a 50 per cent improvement in levels of adult literacy by 2015, especially for women.

To achieve these goals and targets, we will implement the following strategies and actions:

1. Develop and implement special strategies to ensure that schooling is readily accessible to all children and adolescents, and that basic education is affordable for all families.
2. Promote innovative programmes that encourage schools and communities to search more actively for children who have dropped out or are excluded from school and from learning, especially girls and working children, children with special needs and children with disabilities, and help them enrol, attend, and successfully complete their education, involving governments as well as families, communities and non-governmental organizations as partners in the educational process. Special measures should be put in place to prevent and reduce drop out due to, *inter alia*, entry into employment.
3. Bridge the divide between formal and non-formal education, taking into account the need to ensure good quality of the educational services, including the competence of providers, and acknowledging that non-formal education and alternative approaches provide beneficial experiences. In addition, develop complementarity between the two delivery systems.
4. Ensure that all basic education programmes are accessible, inclusive and responsive to children with special learning needs and for children with various forms of disabilities.
5. Ensure that indigenous children and children belonging to minorities have access to quality education on the same basis as other children. Efforts must be directed to providing this education in a manner that respects their heritage. Efforts must also be directed at providing educational opportunities so that indigenous children and children belonging to minorities can develop an understanding of, and sustain their cultural identity, including significant aspects such as language and values.
6. Develop and implement special strategies for improving the quality of education and meeting the learning needs of all.
7. Create, with children, a child-friendly learning environment, in which they feel safe, are protected from abuse, violence and discrimination, and are healthy and encouraged to learn.

article 28

Ensure that education programmes and materials fully reflect the promotion and protection of human rights and the values of peace, tolerance and gender equality, using every opportunity presented by the International Decade for a Culture of Peace and Non-Violence for the Children of the World (2001-2010).

8. Strengthen early childhood care and education by providing services, developing and supporting programmes directed to families, legal guardians, caregivers and communities.
9. Provide education and training opportunities to adolescents to help them acquire sustainable livelihoods.
10. Design, where appropriate, and implement programmes that enable pregnant adolescents and adolescent mothers to continue to complete their education.
11. Urge the continued development and implementation of programmes for children, including adolescents, especially in schools, to prevent/discourage the use of tobacco and alcohol; detect, counter and prevent trafficking, and the use of narcotic drugs and psychotropic substances except for medical purposes, by, *inter alia*, promoting mass media information campaigns on their harmful effects as well as the risk of addiction and taking necessary actions to deal with the root causes.
12. Promote innovative programmes to provide incentives to low-income families with school-age children to increase the enrolment and attendance of girls and boys and to ensure that they are not obliged to work in a way that interferes with their schooling.
13. Develop and implement programmes that specifically aim to eliminate gender disparities in enrolment and gender-based bias and stereotypes in education systems, curricula and materials, whether derived from any discriminatory practices, social or cultural attitudes or legal and economic circumstances.
14. Enhance the status, morale, training and professionalism of teachers including early childhood educators, ensuring appropriate remuneration for their work and opportunities and incentives for their development.
15. Develop responsive, participatory and accountable systems of educational governance and management at the school, community and national levels
16. Meet the specific learning needs of children affected by crises, by ensuring that education is provided during and after crises, and conduct education programmes to promote a culture of peace in ways that help to prevent violence and conflict and promote the rehabilitation of victims.
17. Provide accessible recreational and sports opportunities and facilities at schools and in communities.
18. Harness the rapidly evolving information and communication technologies to support education at an affordable cost, including open and distance education, while reducing inequality in access and quality.
19. Develop strategies to mitigate the impact of HIV/AIDS on education systems and schools, students and learning.

("A World Fit for Children", Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, paras. 39 and 40)

Its outcome document, *A World Fit for Children,* calls for universal primary education "that is free, compulsory and of good quality as a cornerstone of an inclusive basic education. Gender disparities in primary and secondary education must be eliminated." (*A World Fit for Children*, Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, para. 7) It noted that, despite all the preceding efforts: "Education is a human right and a key factor to reducing poverty and child labour and promoting democracy, peace, tolerance and development. Yet more than 100 million children of primary school age, the majority of them girls, are not enrolled in school. Millions more are taught by untrained and underpaid

teachers in overcrowded, unhealthy and poorly equipped classrooms. And one third of all children do not complete five years of schooling, the minimum required for basic literacy." (Para. 38) The box on page 409 sets out the targets and strategies for meeting the United Nations objectives.

In 1998 the United Nations Commission on Human Rights appointed a Special Rapporteur on the right to education The mandate is a large one: to report on the status of the right to education throughout the world and the difficulties in implementing this right, with particular attention to gender inequality, and to assist Governments in securing progressive implementation, including collaboration with the relevant international agencies and identifying sources of funding for assistance (General Assembly resolution 1998/33). The Rapporteur submits annual reports to the Commission on Human Rights (now the Human Rights Council); previous reports include special issues on girls' education, privatization, the impact of international trade and the justiciability of education rights (see www.ohchr.org/english/issues/education/rapporteur/annual.htm).

During the drafting of the Convention on the Rights of the Child, members of the Working Group were keen to include the principle established in both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights that States should respect parents' rights to ensure that the education of their children is in conformity with their own religious and moral convictions. However, this was rejected on the grounds that parents' overall rights and responsibilities were dealt with elsewhere in the Convention. (E/CN.4/1985/64, pp. 11 to 15 and E/CN.4/1989/48, pp. 79 to 84; Detrick, pp. 384 and 394)

The Holy See was sufficiently concerned by this omission to enter a reservation: "That it interprets the articles of the Convention in a way which safeguards the primary and inalienable rights of parents, in particular in so far as those rights concern education (articles 13 and 28)" (CRC/C/Rev.8, p. 23). The Convention does not safeguard "primary and inalienable" rights of parents in education. These rights are subject, for example, to the best interests of the child, the evolving capacities of the child (article 5, page 77, article 12, page 150 and article 18, page 232) and the child's own rights under the Convention, including the right to an education that promotes tolerance and respect for others (article 29, page 447). Article 29 does however safeguard the rights of parents and others to establish schools outside the state system, and article 30 provides that children of minority cultures should not be denied rights to practise their language, religion and culture.

The Committee urged the Holy See to review its reservations, expressing concern:

"... in particular with respect to the full recognition of the child as a subject of rights." *(Holy See CRC/C/15/Add.46, para. 7)*

The "right of the child to education" to be achieved "progressively"

The child's basic right to education is enshrined in the first paragraph of article 28. Subparagraphs (a) to (e), which detail particular duties for States Parties in this respect, are governed by the initial statement, which provides that States Parties shall achieve the right to education "progressively and on the basis of equal opportunity." Some countries include a specific right of children to education in their constitutions or education legislation, others imply such a right by placing duties on parents to secure their children's education. India reported to the Committee that: "… the inability of the State to provide free compulsory education for all children within a period of 10 years from the commencement of the Constitution has compelled the Supreme Court to declare the right to education to be part of the fundamental right to personal liberty (article 21), as without education, life cannot be lived with dignity" (India CRC/C/28/Add.10, para. 75). When examining India's Second Report, the Committee welcomed

"... the adoption of the Constitution (86th Amendment) Act, 2002, providing for free and compulsory education to all children 6-14 years old." *(India CRC/C/15/Add.228, para. 3)*

"Education"

The Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms, adopted by the General Conference of UNESCO at its 18th session (November 1974) states: "The word 'education' implies the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capacities, attitudes, aptitudes and knowledge. This process is not limited to any specific activities." (Article 1(a))

The definition of "education" in the Convention is not limited to instruction delivered within schools, and there is increasing recognition of the value of informal education, for example conducted in the home or in street-based programmes or through the Internet. However the reference in subparagraph (e) to "attendance at schools" and in article 29(2) to private "educational institutions" implies

that children will normally attend school. Article 28 mentions "vocational education", "the elimination of ... illiteracy" and "access to scientific and technical knowledge", and article 29 sets out the broad aims of education, but the Convention on the Rights of the Child does not attempt to define the detail of a basic curriculum.

The Committee on the Rights of the Child has, however, made clear that education must include the basic skills of literacy and numeracy, for example expressing concern to Brazil

"... about the low quality of education in many schools to the extent that there are many children who, despite several years of school attendance, cannot read and write or do basic calculations." (Brazil CRC/C/15/Add.241, para. 58)

The only information directly relating to education content currently required by the *Guidelines for Periodic Reports (Revised 2005)* are the State's literacy rates for children and adults (see page 703). Otherwise, the Committee has tended to focus on the relevance of the curriculum to the child's life (as discussed in relation to subparagraph (e) below, page 426) rather than examining whether, for example, children's curricula includes adequate scientific or technical instruction. However article 28 does require States to take measures to combat drop-out, which means that States must think about the content as well as the delivery of education (see page 426). The Committee urges governments to focus on the quality of education as well as its universal availability, as, for example, in its recommendation to Armenia to:

"Allocate the required resources (human, technical and financial) to ensure access to quality education for all children, including the most vulnerable groups... [and]... develop indicators for quality education and ensure that the quality of education is monitored and guaranteed..." (Armenia CRC/C/15/Add.225, para. 55)

The Convention does not define how much time education should take up in a child's life. The Committee has indicated that a minimum of nine years education (primary and secondary) is expected, that free and compulsory primary education should comprise at least six years and that States should respect the "international standard" of a school year of 180 days (see, for example, the Committee's Concluding Observations to Turkmenistan (CRC/C/TKM/CO/1, paras. 59 and 60). It is also critical of "shift systems" operating in education, which inevitably reduce the school hours of individual pupils.

"Progressively"

Some developing nations may lack the resources to ensure that secondary education, or even primary education, is accessible to all children, and even rich nations claim difficulties in ensuring that higher education is available to all young people on the basis of capacity. Nonetheless, all ratifying nations must plan for progressive provision of education, and, in line with article 4, they must ensure that this is done "to the maximum extent of available resources". The General Comment by the Committee on Economic, Social and Cultural Rights on what "progressively" realizing rights means is obviously significant (see article 4, page 52).

In 1999 the Committee on Economic, Social and Cultural Rights issued a General Comment to remind States Parties that, under article 14 of the International Covenant, if they have not been able to secure compulsory, free primary education, they have an obligation to develop and adopt, within two years, a detailed plan of action for the progressive implementation within a specified number of years of compulsory primary education free of charge for all. The Comment notes that the clear and unequivocal obligation under article 14 needs to be "scrupulously observed".

It can be assumed that the Committee on the Rights of the Child expects to see all education budgets increasing, or at any rate not decreasing, in order to comply with the expectation inherent in the word "progressively", in line with the approach of the Committee on Economic, Social and Cultural Rights. For example the Committee recommended that China:

"... Increase the allocation of resources to education in step with increases in GDP, as directed by the Education Law, and target those resources towards ensuring that all children, in particular girls, children with learning difficulties, and ethnic minority and migrant children, complete nine years of compulsory education and have equal access to early childhood education and development programmes..." (China CRC/C/CHN/CO/2, para. 77)

And expressed "deep concern" that in Pakistan:

"(a) The public expenditure on education (as a percentage of the gross domestic product) in the State Party is extremely low and has been sinking in recent years;
(b) The considerable amounts of international aid invested in the State Party for the purpose of promoting education have not been used in an efficient or adequate way;
(c) School enrolment and literacy rates are very low;
(d) Drop-out rates are very high and secondary education enrolment rates have decreased;
(e) Gender and geographical disparities remain very high;
(f) The quality of education is poor..." (Pakistan CRC/C/15/Add.217, para. 60)

The word "progressively" does not only relate to financial expenditure, it also relates to the administration of education, with recommendations from the Committee that countries take a step back and review the whole of their education systems rather than tinker with specific aspects. For example:

"... it is strongly recommended that the State Party undertake, within two years, to elaborate, adopt and submit to the Committee a detailed plan of action for the progressive implementation, within a reasonable number of years, of compulsory education free of charge for all. The Committee further recommends that the State Party undertake a study of the educational system with a view to improving access to education at all levels of the system, increasing the enrolment rate of girls, particularly at the secondary level, introducing local languages as additional tools of instruction, and improving the overall quality of education. The Committee also recommends that a public education campaign be undertaken to promote the importance of education and to influence cultural attitudes positively in this regard." (Vanuatu CRC/C/15/Add.111, para. 21)

"The Committee encourages that the national legislation be amended to clearly reflect the right to free primary education and also recommends the State Party to:
(a) devote more resources to education in the national budget and substantially increase the percentage of fund for the public sector;
(b) develop a rights-based National Strategy of Education;
(c) focus on an overall improvement of the quality of education provided, in particular in rural areas;
(d) increase efforts to eliminate the discrimination in access to education by monitoring the effective abolishment of enrolment fees and other costs in order to counteract high drop-out and low completion rates. The Committee recommends the usage of proactive measures, such as additional support to compensate for hidden costs, in order to combat the pervasive discrimination and social exclusion which affect vulnerable groups, such as children in rural areas, internally displaced, Afro-Colombian and indigenous children..." (Colombia CRC/C/COL/CO/3, para. 77)

The Committee also encourages States to have one central authority in charge of education (see, for example, Lebanon CRC/C/LBN/CO/3, para. 63) and has expressed concern about States which have little effective control, such as Haiti:

"... the Committee is concerned that education is principally run by the private sector... while supervision by the State through the National Partnership Commission is very limited." (Haiti CRC/C/15/Add.202, para. 52)

In 2002 the Committee held a Day of General Discussion on "The private sector as service provider and its role in implementing child rights", following which it recommended that:

"... States Parties... undertake a comprehensive and transparent assessment of the political, financial and economic implications and the possible limitations on the rights of beneficiaries in general and children in particular. Such assessments should determine in particular the manner in which the availability, accessibility, acceptability and quality of the services will be affected..." (Committee on the Rights of the Child, Report on the thirty-first session, September/October 2002, CRC/C/121, para. 11)

The Committee also recommends that local providers and consumers of education are involved in its progressive development, as, for example, it recommended to Sri Lanka:

"... the Committee recommends that the State Party... provide additional information on the reforms and adequate material resources for their implementation to principals, teachers and parents in rural and conflict-affected areas ... [and] ... establish a participatory mechanism for monitoring and evaluating the implementation of the education reforms which involves principals, teachers, parents and students..." (Sri Lanka CRC/C/15/Add.207, para. 43)

The right to education to be achieved "on the basis of equal opportunity"

"On the basis of equal opportunity" stresses the general principle of article 2 on non-discrimination (page 17).

The foremost bar to equality of opportunity in education is, usually, the lack of resources – either in terms of a low government budget applied to education so that education is not made available to all members of the population, or in terms of families' poverty so that children have to be withheld or withdrawn from education.

In addition, the Committee on the Rights of the Child has expressed concern that specific groups of children are discriminated against in education, both in terms of the definition of UNESCO's 1960 Convention against Discrimination in Education: "... Of depriving any person or group of persons of access to education of any type or at any level ... [or] ... limiting any person or group of persons to education of an inferior standard" (article 1) and through less direct forms of

discrimination. The Committee has identified various groups as being particularly prone to suffer discrimination in education, as summed up in its Concluding Observations to China:

"... While noting efforts made by the State Party in mainland China, the Committee is concerned about remaining disparities in access to and availability of education, which negatively affect girls, children with learning difficulties, ethnic minority children, children living in rural areas and western provinces, and migrant children." (China CRC/C/CHN/CO/2, para. 75)

These forms of discrimination are discussed below.

Girls

The 1990 World Summit for Children estimated that two thirds of the world's 100 million children without basic education were girls and set goals for increasing the education of female children. These goals were endorsed by the 1995 World Conference on Women, in Beijing, which attributed the disproportionately low numbers of girls in education to "customary attitudes, child labour, early marriages, lack of funds and lack of adequate schooling facilities, teenage pregnancies and gender inequalities in society at large as well as in the family ... In some countries the shortage of women teachers can inhibit the enrolment of girls. In many cases, girls start to undertake heavy domestic chores at a very early age and are expected to manage both educational and domestic responsibilities, often resulting in poor scholastic performance and an early drop-out from schooling". The Conference called for governments to "Increase enrolment and improve retention rates of girls by allocating appropriate budgetary resources and by enlisting the support of the community and parents through campaigns and flexible school schedules, incentives, scholarships, access programmes for out-of-school girls and other measures". (The Fourth World Conference on Women, Platform for Action, Beijing, 1995, A/CONF.177/20/Rev. 1, paras. 263 and 279)

Five years later the United Nations General Assembly held a special session to follow up the Beijing Conference. It noted some progress, but charted the continuing obstacles to improving the education of girls: lack of resources, insufficient political will, persisting gender discrimination and gender stereotyping, lack of child-care facilities, inadequate links between education and women's labour markets and inadequate teacher salaries (United Nations General Assembly, twenty-third special session, 10 June 2000, A/RES/S-23/3, paras. 9 and 10). A further 10-year follow-up was hosted by the United Nations Commission on the Status of Women in 2005, which linked the Beijing Declaration with the Millennium Development Goals (Economic and Social Council, Commission on the Status of Women, Report on the forty-ninth session, February/March 2005, E/CN.6/2005/11).

In the first half of the new millennium's first decade, the figures for the percentage of girls enrolling in primary and secondary education have increased in some countries, but in others girls still lag behind their male peers and, once enrolled, are much more likely to drop out of school. The *Millennium Development Goals Report 2006* noted:

"Globally, more than one in five girls of primary-school age is not in school, compared to about one in six boys. Oceania, Western Asia and Southern Asia are the regions where the gender gap is most evident. Of particular concern is the wide gender gap in sub-Saharan Africa and Southern Asia, where almost 80 per cent of the world's out-of-school children live." (*The Millennium Development Goals Report 2006,* United Nations Department of Economic and Social Affairs, DESA, New York, June 2006, p. 7)

The Special Rapporteur on the right to education reports:

"As the year 2005 draws to close, we know for a fact that the goal of gender equality established in the Millennium Development Goals has not been met in 94 of the 149 countries for which information is available.

"There are 86 countries unlikely to achieve gender parity even by the year 2015, while 76 countries have not even achieved gender parity in primary education, and girls continue to suffer from the disparities.

"Had the goal been attained, there would now be 14 million more girls in primary school, but the reality is that in 41 countries – together accounting for 20 million girls not attending school – the gender gap is growing wider or is narrowing so slowly that parity will not be achieved before the year 2040, while 115 countries (of the 172 on which information is available) still report disparities in secondary education.

"In any event, the concept of 'parity', implying as it does mere quantification of the girls registered for school, does not reflect the substantive idea of 'gender equality' as contemplated in the 1995 Beijing Declaration and Platform of Action, so it is useless for evaluating improvements

in the quality of education." (United Nations, Economic and Social Council, Commission on Human Rights, sixty-second session, Girls' right to education, Report submitted by the Special Rapporteur on the right to education, February 2006, E/CN.4/2006/45, paras. 58 to 61, p. 10)

The Committee has taken up the issue of girls' education with many countries. For example, Mozambique and the Islamic Republic of Iran were told:

"The Committee recommends the State Party… make greater efforts to ensure that girls have the same opportunities as boys to attend formal education; take steps to ensure that the education of girls is seen, by parents, families and communities, as equally important as that of boys and that education is seen as a right of all children; address traditional and other practices, such as excessive domestic work, which prevent girls from attending formal education; ensure that pregnancy does not lead to the banning of girls' attendance at school; consider recruiting and training more women teachers; make particular efforts to support girls seeking higher education; make every effort to implement its own policies; seek technical assistance from UNICEF in this regard;…" (Mozambique CRC/C/15/Add.172, para. 57)

"The Committee is also concerned about the disparity that continues to exist between boys and girls; the high drop-out rates of girls in rural schools upon reaching puberty; the lack of female teachers in rural areas; long distances between homes and schools, which keep girls at home, particularly after primary school.
"… the Committee …recommends that the State Party… ensure that all children… have equal educational opportunities on all levels of the educational system without discrimination based on gender, religion, ethnic origin, nationality or statelessness; … eliminate all disparities in resources provided to schools in urban and rural areas in order to guarantee equal educational opportunities throughout the country;… better equip schools with textbooks, other materials, and well-trained teachers, particularly female teachers, and introduce active, creative and cooperative learning methods in schools to promote children's capacities in a knowledge-based economy and society…" (Islamic Republic of Iran CRC/C/15/Add.254, paras. 60 and 61)

The Committee has also noted that high rates of early pregnancy or early marriage were linked to low school attendance and high drop-out rates of girls, and recommends that State laws should prohibit school expulsion of pregnant pupils (see, for example, United Republic of Tanzania CRC/C/TZA/CO/2). It has also expressed concern that girls were sometimes the victims of sexual harassment by teachers, another reason why girls drop out of school.

It should perhaps be noted in passing that, because of changing work patterns and social attitudes, the education of boys appears likely to become one of the problems confronting both developed and developing nations in the twenty-first century, particularly as regards drop-out rates and under-achievement. This phenomenon has also been noted by the Committee:

"The Committee recommends that all appropriate measures be taken to prevent and discourage truancy and further to encourage children, especially boys, to stay in school, particularly during the period of compulsory education. The Committee urges the State Party to undertake a study on the academic under-achievement of boys, with a view to understanding the scope and nature of the problem and to enhancing the academic achievement of boys, particularly in the Caribbean Territories and the Falkland Islands." (United Kingdom – Overseas Territories CRC/C/15/Add.135, para. 44)

"The Committee … is further concerned at … the growing number of children who drop out of school, particularly among boys." (Saint Lucia CRC/C/15/Add.258, para. 61)

Rural children

Within the developing world there are often striking discrepancies between the education of rural and urban-based children, recognized as one of the significant challenges in fulfilling the Millennium Development Goals:

"High rates of poverty in rural areas limit educational opportunities because of demands for children's labour, low levels of parental education and lack of access to good quality schooling. Based on household surveys in 80 developing countries, 30 per cent of rural children of primary-school age do not attend school, compared to 18 per cent in urban areas. And because rural areas have larger populations of children, they account for 82 per cent of children who are not in school in developing countries." (*The Millennium Development Goals Report 2006*, p. 7)

Poor educational opportunities for children in rural areas arise from a combination of factors, including the administrative cost and difficulty of servicing remote and scattered farms and villages, a dearth of teachers prepared to live in the countryside, the dependence of poor farming communities on children as labourers and the apparent irrelevance of schools and the curriculum to rural lives.

The Committee, for example, asked Uzbekistan to

"... guarantee that the cotton harvest does not compromise children's rights to education." *(Uzbekistan CRC/C/UZB/CO/2, para. 58)*

And expressed concern to Mongolia

"... about the remaining difficulties encountered by children, especially in rural areas of the country, in their access to education and attendance in school. The high number of primary school-aged children not enrolled in school, including gender and regional disparities in school enrolment, the increasing rates of illiteracy and the high rate of school drop-outs, especially in rural areas, give cause for serious concerns.
"The Committee reiterates its concern about boys belonging to herder families and living in rural areas who are at a higher risk of drop-out from school and being involved in child labour." *(Mongolia CRC/C/15/Add.264, paras. 51 and 52)*

The Committee has recommended the introduction of mobile schools and distance learning programmes for nomadic families and an increase in small neighbourhood schools for rural children.

Minority groups

Particular groups within populations are also liable to suffer discrimination in educational opportunities, such as children of minority cultures, indigenous peoples, gypsies, immigrants, refugees and children caught up in armed conflict.

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, South Africa, September 2001) in its Declaration underlines "the links between the right to education and the struggle against racism, racial discrimination, xenophobia and related intolerance and the essential role of education, including human rights education and education which is sensitive to and respects cultural diversity, especially amongst children and young people, in the prevention and eradication of all forms of intolerance and discrimination" (Declaration, para. 97).

The Programme of Action of the World Conference makes detailed recommendations for education, urging States to commit themselves to ensuring access without discrimination, including access to free primary education for all children, both girls and boys. States should ensure equal access to education for all, in law and in practice, and refrain from any legal or other measures leading to imposed racial segregation in access to schooling (Programme of Action, A/CONF.189/12, paras. 121 and 122).

Failure to take up educational opportunities is sometimes attributed to the group itself, for example because they speak a minority language or pursue a nomadic lifestyle, but such discriminatory explanations are unacceptable to the Committee. Equality of educational opportunity can only be achieved if education is recognized as a right for all children, irrespective of their background. It has expressed consistent concern about the education of Roma (or gypsy) children in European and Commonwealth of Independent States' countries, noting, for example, that only 33 per cent of Roma children attend primary school in Bosnia and Herzegovina (CRC/C/15/Add.260, para. 57) and expressing concern to the Czech Republic and Hungary:

"... The Committee welcomes the secondary school for Roma children established on the initiative of the Roma people themselves. However, the Committee is concerned that the implementation of the reform of the education system remains insufficient and that in-service teacher training in this respect is lacking. The Committee is further concerned that Roma children continue to be over-represented in so-called 'special schools' and at the discrimination in access to education of illegal migrants and refugees who are denied asylum." *(Czech Republic CRC/C/15/Add.201, para. 54)*

"... that the non-attendance of a number of children is not adequately controlled or prevented and that many Roma children leave the school system before graduation, although the Government has established programmes and scholarships in order to further the learning performance of Roma children.
"The Committee, while recognizing certain efforts to reduce segregated education, is concerned that many Roma children are still arbitrarily placed in special institutions or classes. Furthermore, the Committee is concerned that the quality of schools suffers from regional disparities and that access to pre-schools is reportedly limited in regions where poverty is high and Roma population is dominant." *(Hungary CRC/C/HUN/CO/2, paras. 48 and 49)*

The Committee on the Elimination of Racial Discrimination published a General Recommendation on discrimination against Roma which called on States to take measures:

- "To support the inclusion in the school system of all children of Roma origin and to act to reduce drop-out rates, in particular among Roma girls, and, for these purposes, to cooperate actively with Roma parents, associations and local communities.
- "To prevent and avoid as much as possible the segregation of Roma students, while keeping open the possibility for bilingual or mother-tongue tuition; to this end, to endeavour to

raise the quality of education in all schools and the level of achievement in schools by the minority community, to recruit school personnel from among members of Roma communities and to promote intercultural education.

- "To consider adopting measures in favour of Roma children, in cooperation with their parents, in the field of education.
- "To act with determination to eliminate any discrimination or racial harassment of Roma students.
- "To take the necessary measures to ensure a process of basic education for Roma children of travelling communities, including by admitting them temporarily to local schools, by temporary classes in their places of encampment, or by using new technologies for distance education.
- "To ensure that their programmes, projects and campaigns in the field of education take into account the disadvantaged situation of Roma girls and women.
- "To take urgent and sustained measures in training teachers, educators and assistants from among Roma students.
- "To act to improve dialogue and communication between the teaching personnel and Roma children, Roma communities and parents, using more often assistants chosen from among the Roma.
- "To ensure adequate forms and schemes of education for members of Roma communities beyond school age, in order to improve adult literacy among them.
- "To include in textbooks, at all appropriate levels, chapters about the history and culture of Roma, and encourage and support the publication and distribution of books and other print materials as well as the broadcasting of television and radio programmes, as appropriate, about their history and culture, including in languages spoken by them." (Committee on the Elimination of Racial Discrimination, General Recommendation XXVII, 2000, HRI/GEN/1/Rev.8, paras. 17 to 26, pp. 261 and 262)

Equality of educational opportunity can only be achieved if education is recognized as a right for all children, irrespective of their background. The Committee has noted with concern that immigrant and asylum-seeking children often do not have the same access to education as other children in the country, for example in Canada:

"The Committee nevertheless reiterates the concern of the Committee on the Elimination of Racial Discrimination (A/57/18, para. 337) about allegations that children of migrants with no status are being excluded from school in some provinces." *(Canada CRC/C/15/Add.215, para. 44)*

The provision of education in the child's mother tongue is obviously important, as is, equally, teaching migrant children the local language (this is also discussed in relation to article 30, page 464). For example the Committee welcomed the Philippines' 'Lingua Franca Project' which uses the local vernacular as a teaching medium, and encouraged it to:

"... provide indigenous children and children belonging to minority groups with equal access to quality education which respects their distinct cultural patterns and uses local indigenous and minority languages in education through, inter alia*, the Lingua Franca Project."* *(Philippines CRC/C/15/Add.259, para. 70)*

And it both commended and expressed concern about the situation in Luxembourg:

"The Committee notes with satisfaction that refugee and asylum-seeking children have free access to the school system in Luxembourg and that the Ministry of Education has appointed intercultural mediators in order to facilitate the integration of foreigners in the educational system. However, the Committee is still concerned that a large number of foreign children (more than 40 per cent of the school population) are often disadvantaged by the educational programme and teaching methods in Luxembourg, including language problems.

"The Committee recommends that the State Party consider all possible measures through which foreign children and children of asylum seekers can be granted equal access to the same standard of services in the field of education. The Committee also encourages the State Party to ensure that language does not become an obstacle in education and recommends any initiative, including support classes, to help children to learn the needed languages." *(Luxembourg CRC/C/15/Add.250, paras. 50 and 51)*

Although language is a vital issue for many of these children, attitudes and access can be even greater obstacles, as the Committee raised with Greece:

"... the Committee remains concerned about a variety of problems that still exist, such as... reports of xenophobia among teachers and students;... difficulties in gaining access to education for some groups of children, including asylum-seeking and refugee children

who experience difficulties in registering for school and obtaining education certificates; ... the poor quality of education in many schools that teach in languages other than Greek, including the use of outdated textbooks and late term starting dates; the very high estimated illiteracy rates among Roma children; the low proportion of children from distinct ethnic, religious, linguistic or cultural groups who attend secondary school and that some children, particularly from these groups, are accepted in school only as auditors and not permitted to gain academic credit for their studies;...

"The Committee recommends that the State Party... ensure the access to education for all children in the State Party, including increasing the enrolment and reducing the drop-out rates, giving particular attention to children in rural communities, children from Roma and other distinct ethnic, religious, linguistic or cultural groups, and children from disadvantaged backgrounds, including through the use of information campaigns targeting parents and local authorities;... encourage and support increases in the numbers of children from distinct ethnic, religious, linguistic or cultural groups attending secondary school;... expand the practice of recruiting second teachers who speak languages other than Greek to cover all relevant schools and major languages;... continue and strengthen existing programmes of training and information for all teachers on multicultural concerns, with a view to the effective integration into the State Party's school system of children from all distinct ethnic, religious, linguistic or cultural groups and other backgrounds..." (Greece CRC/C/15/Add.177, paras. 66 and 67)

The Committee lays particular emphasis on the need to provide education to unaccompanied asylum-seeking and immigrant children in its General Comment No. 6 on "Treatment of unaccompanied and separated children outside their country of origin":

"States should ensure that access to education is maintained during all phases of the displacement cycle. Every unaccompanied and separated child, irrespective of status, shall have full access to education in the country that they have entered ... Such access should be granted without discrimination and, in particular, separated and unaccompanied girls shall have equal access to formal and informal education, including vocational training at all levels. Access to quality education should also be ensured for children with special needs, in particular children with disabilities.

"The unaccompanied or separated child should be registered with appropriate school authorities as soon as possible and get assistance in maximizing learning opportunities. All unaccompanied and separated children have the right to maintain their cultural identity and values, including the maintenance and development of their native language. All adolescents should be allowed to enrol in vocational/professional training or education, and early learning programmes should be made available to young children. States should ensure that unaccompanied or separated children are provided with school certificates or other documentation indicating their level of education, in particular in preparation of relocation, resettlement or return." (Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, paras. 41 and 42)

State education systems which fail to provide secular or multi-denominational schools are likely to be discriminatory:

"The Committee reiterates the concern raised by the Committee on the Elimination of Racial Discrimination (CERD/C/IRL/CO/2) that non-denominational or multidenominational schools represent less than 1 per cent of the total number of primary education facilities.

"The Committee encourages the State Party to take fully into consideration the recommendations made by the Committee on the Elimination of Racial Discrimination (CERD/C/IRL/CO/2, para. 18) which encourages the promotion of the establishment of non-denominational or multi-denominational schools and to amend the existing legislative framework to eliminate discrimination in school admissions." (Ireland CRC/C/IRL/CO/2, paras. 60 and 61)

Children with disabilities and children with, or affected by, HIV/AIDS

All children, no matter how seriously disabled they are, are entitled to education that maximizes their potential. Any law or practice that limits this right, for example by deeming certain children "uneducable" or by entitling them to "health treatment" rather than "education", breaches articles 2 and 28. Moreover, the education of children with disabilities should be provided "in a manner conducive to the child's achieving the fullest possible social integration" (article 23(3)) which means that States should aim to provide effective and appropriate education for children with disabilities in mainstream schools alongside children without disabilities (see page 337).

The Convention on the Rights of Persons with Disabilities, adopted in December 2006, emphasizes the importance of full participation in all aspects of life, including education. It requires States Parties to provide children with disabilities with a full education, as defined in the Convention

Convention on the Rights of Persons with Disabilities

Article 24 – Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:
   - The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
   - The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
   - Enabling persons with disabilities to participate effectively in a free society.
2. In realizing this right, States Parties shall ensure that:
   - Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
   - Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
   - Reasonable accommodation of the individual's requirements is provided;
   - Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
   - Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.
3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:
   - Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
   - Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
   - Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.
4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.
5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

on the Rights of the Child, and specifically to provide necessary mobility and learning aids and to "ensure an inclusive education system at all levels" (article 24, see box for full text of article).

The Committee's General Comment No. 9 on "The rights of children with disabilities" explains how States should tackle the discriminatory segregation of children with disabilities in education:

"... At its core, inclusive education is a set of values, principles, and practices that seeks meaningful, effective, and quality education for all students, that does justice to the diversity of learning conditions and requirements not only of children with disabilities, but for all students. This goal can be achieved by different organizational means which respect the diversity of children. Inclusion may range from full-time placement of all students with disabilities into one regular classroom or placement into the regular classroom with varying degree of inclusion including a certain portion of special education. It is important to understand that inclusion should not be understood nor practiced as simply integrating children with disabilities into the regular system regardless of their challenges and needs. Close cooperation among special educators and regular educators is essential. Schools' curricula must be re-evaluated and developed to meet the needs of children with and without disabilities. Modification in training programmes for teachers and other personnel involved in the educational system must be achieved in order to fully implement the philosophy of inclusive education." *(Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, para. 67)*

As regards children with, or affected by, HIV/AIDS, the Committee's General Comment No. 3 on "HIV/AIDS and the rights of the child" states:

"... the Committee wishes to remind States Parties of their obligation to ensure that primary education is available to all children, whether infected, orphaned or otherwise affected by HIV/AIDS. In many communities where HIV has spread widely, children from affected families, in particular girls, are facing serious difficulties staying in school and the number of teachers and other school employees lost to AIDS is limiting and threatening to destroy the ability of children to access education. States Parties must make adequate provision to ensure that children affected by HIV/AIDS can stay in school and ensure the qualified replacement of sick teachers so that children's regular attendance at schools is not affected, and that the right to education (art. 28) of all children living within these communities is fully protected." *(Committee on the Rights of the Child, General Comment No. 3, 2003, CRC/GC//2003/3, para.18)*

The Committee has expressed concern about educational discrimination against disabled and ill children, for example:

"The Committee ... is concerned that education is provided to mentally and physically disabled persons only in residential institutions, and that their number has significantly increased from 1997 to 2000, despite the general decline in the population." *(Georgia CRC/C/15/Add.222, para.56)*

"The Committee is... concerned at the labelling of some schools as 'sensitive' and at the lack of meaningful child participation in decision-making processes within schools. Furthermore, it is concerned that thousands of children with disabilities are deprived of their right to education.
"The Committee urges the State Party... to pursue its efforts to ensure that all children enjoy the right to education consistent with articles 28 and 29 of the Convention, and that children with disabilities are integrated into mainstream education as far as possible, in keeping with article 3 of the Convention..." *(France CRC/C/15/Add.240, paras. 48 and 49)*

"The Committee is concerned that... students with some chronic diseases including asthma, anaemia, hepatitis, skin diseases and HIV/AIDS can be excluded from mainstream schooling because of their health problems." *(Azerbaijan CRC/C/AZE/CO/2, para. 57)*

"The Committee ... notes with concern the high rate of illiteracy among Palestinian refugee children with disabilities, despite the fact that many of these children could benefit from school mainstreaming." *(Lebanon CRC/C/LBN/CO/3, para. 65)*

Children in forms of detention

These children are also often denied rights to education or to appropriate education. Rules 13 and 38 to 47 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty specify in great detail high standards of education for these children, including the provision of higher, vocational, special and physical education (see article 37, page 548). The Committee generally addresses this issue under article 37, but sometimes includes them in concerns about education provision, for example, in recommending that El Salvador and Latvia:

"... ensure that juvenile offenders have access to adequate educational and vocational programmes in detention centres and that teachers who educate juvenile offenders receive adequate specialized training..." *(El Salvador CRC/C/15/Add.232, para. 58)*

"... take immediate steps to allocate appropriate financial and human resources... to ensure that all children from all areas of the country, without distinction, including children in pre-trial custody and detention, have equal access to quality education, including human rights education..." *(Latvia CRC/C/LVA/CO/2, para. 51)*

"(a) Make primary education compulsory and available free to all"

During the drafting of the Convention on the Rights of the Child there was some discussion about the word "free" (which had already appeared in other related treaties). Objections were made that cost-free education is an illusion since someone always pays, either directly or indirectly through taxes. A representative from Japan proposed that the word "free" should be interpreted to mean that education "could be made accessible to all children and not to mean that free education was a measure which States Parties were obliged to adopt" (E/CN.4/1989/48, pp. 79 to 84; Detrick, p. 393).

Subparagraph (a) does, however, clearly state that "free" education at the primary stage is a measure that States Parties are obliged to secure for all children, not just low-income children or other categories of children. Three countries entered reservations to this subparagraph – Samoa, Singapore and Swaziland.

Samoa's reservation states: "The Government of Western Samoa whilst recognizing the importance of providing free primary education as specified under article 28(1)(a) of the Convention on the Rights of the Child, and being mindful of the fact that the greater proportion of schools within Western Samoa that provide primary level education are controlled by bodies outside the control of the Government ... the Government of Western Samoa thus reserves the right to allocate resources to the primary sector of education in Western Samoa in contrast to the requirement of article 28(1)(a) to provide free primary education." (CRC/C/2/Rev.8, p. 36) This reservation suggests a misunderstanding of the requirements of subparagraph (a), which does not refer to States "providing" free primary education but to them "making" it free, that is, ensuring that the provision is made but not necessarily providing it themselves. Thus, if the Samoan Government is satisfied that the "bodies outside the control of the Government" which provide primary education are providing it free of charge to all (and that the education provided is in conformity with the rest of the Convention) then the Government is not obliged to duplicate this funding. The Committee recommended that Samoa withdraw this reservation (Samoa CRC/C/WSM/CO/1, para. 7) .

The reservation of Swaziland also seems superfluous: "The Convention on the Rights of the Child being a point of departure to guarantee child rights; taking into consideration the progressive character of the implementation of certain social, economic and cultural rights as recognized in article 4 of the Convention, the Government of the Kingdom of Swaziland would undertake the implementation of the right to free primary education to the maximum extent of available resources and expects to obtain the cooperation of the international community for its full satisfaction as soon as possible." (CRC/C/2/Rev.8, p. 38) Even if Swaziland was not able to secure free primary education for all, so long as it did genuinely deploy its available resources to the maximum extent to this end and had adopted a strategic plan for the progressive implementation of article 28, it need not enter such a reservation.

However, Singapore's reservation clearly seeks to abrogate its duty to secure free compulsory primary education for all children within the jurisdiction, and as such may fall foul of article 51(2) (which does not permit reservations "incompatible with the object and purpose of the present Convention"):

"With respect to article 28(1)(a), the Republic of Singapore:

(a) does not consider itself bound by the requirement to make primary education compulsory because such a measure is unnecessary in our social context where in practice virtually all children attend primary school; and

(b) reserves the right to provide primary education free only to children who are citizens of Singapore." (CRC/C/2/Rev.8, p. 37)

When delivering its Concluding Observations on Singapore's Initial Report the Committee expressed concern that not all children within the jurisdiction of Singapore had access to free primary education and recommended both that the government should ensure that primary education is provided free to all children and that the reservation is withdrawn (Singapore CRC/C/15/Add.220, paras. 6, 7, 42 and 43).

General Comment No. 11 of the Committee on Economic, Social and Cultural Rights on plans of action for primary education, states in relation to the right to primary education "free of charge":

"The nature of this requirement is unequivocal. The right is expressly formulated so as to ensure the availability of primary education without charge to the child, parents or guardians. Fees imposed by the Government, the local authorities or the school, and other direct costs, constitute disincentives to the enjoyment of the right and may jeopardize its realization. They are also often highly regressive in effect. Their elimination is a

article 28

matter which must be addressed by the required plan of action. Indirect costs, such as compulsory levies on parents (sometimes portrayed as being voluntary, when in fact they are not), or the obligation to wear a relatively expensive school uniform, can also fall into the same category." (Committee on Economic, Social and Cultural Rights, General Comment No. 11, 1999, HRI/GEN/1/Rev.8, para. 7, p. 62)

The right to compulsory free primary education is so clearly stated in the Convention that any failure to meet this standard is a major source of concern to the Committee. For example it was critical of Colombia's Constitution:

"The Committee notes that free education during nine years in school is enshrined as a constitutional right, however with the reservation that costs be levied upon those who can afford to pay. In practice this provision has created a discriminatory educational system marked by arbitrary fees and social exclusion. The Committee continues to have a number of serious concerns with regards to the implementation of the right to education, including [that] … budget allocations remain insufficient and unequally distributed between the private and public sector … [and] … the persistence of hidden costs for administrative fees and costs for uniforms, materials and transport. This is demonstrated in a high and increasing drop-out rate among vulnerable groups in society, in particular in rural areas…" (Colombia CRC/C/COL/CO/3, para. 76)

Of Myanmar's hidden costs:

"… Free primary education is not guaranteed in practice, as parents are required to cover the costs of uniforms, textbooks, stationery and other supplies…" (Myanmar CRC/C/15/Add.237, para. 62)

And of the Republic of the Congo's open costs:

"The Committee is also concerned at the common practice of parents' associations having to support the functioning of the educational system by contributing to the salaries of teachers, as well as to the operating and investment expenditure of schools, such as building and furnishing of classroom facilities…" (Republic of the Congo CRC/C/COG/CO/1, para. 68)

And Nicaragua's 'voluntary' costs:

"… the Committee expresses concern at the information that the majority of public schools require students to pay a 'voluntary quota' for their inscription fee, which, added to the expenses incumbent on families for clothing, food, school supplies and transportation, makes education of children for poor families virtually impossible." (Nicaragua CRC/C/15/Add.265, para. 57)

Nor is it enough to ensure that primary education is free, it should also be compulsory – the Committee therefore expressed regret that, though primary education had been made free in Ethiopia, it was not yet compulsory (Ethiopia CRC/C/15/Add.67, para. 7). It should perhaps be noted that it is not necessary to make attendance at school compulsory in order to fulfil this obligation under the Convention. Education and school are not synonymous – children can be educated without schools, though this is unusual, and, sadly, attendance at school does not necessarily mean the child is being educated.

"(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need"

The wording of the right to secondary education is less absolute, and less clear, than that relating to primary education. The weaker phrasing does not reflect any doubt about the usefulness of secondary education to children but rather acknowledges that free compulsory secondary education for all is at present beyond the resources of a number of countries. The phrase "take appropriate measures such as the introduction of free education and offering financial assistance in case of need" suggests that the availability and accessibility of education could be means-tested so that richer families pay while poor children attend free of charge or are awarded scholarships. However, such an approach can too easily lead to situations where secondary education is not, in fact, "available and accessible to every child".

The Committee on Economic, Social and Cultural Rights adopted a General Comment on the right to education which defines "available and accessible" as follows: "Accessibility – educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State Party. Accessibility has three overlapping dimensions:

- Non-discrimination – education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds…;

- Physical accessibility – education has to be within safe physical reach, either by attendance at some reasonably convenient geographical location (e.g., a neighbourhood school) or via modern technology (e.g., access to a 'distance learning' programme);
- Economic accessibility – education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13(2) in relation to primary, secondary and higher education; whereas primary education shall be available 'free to all', States Parties are required to progressively introduce free secondary and higher education;

"… The phrase 'generally available' signifies, firstly, that secondary education is not dependent on a student's apparent capacity or ability and, secondly, that secondary education will be distributed throughout the State in such a way that it is available on the same basis to all… The phrase 'every appropriate means' reinforces the point that States Parties should adopt varied and innovative approaches to the delivery of secondary education in different social and cultural contexts." (Committee on Economic, Social and Cultural Rights, General Comment No. 13, 1999, HRI/GEN/1/Rev.8, para. 13, p. 74)

The Committee on the Rights of the Child has raised concerns about the expense of secondary education:

"The cost to families of secondary education are leading to an increasing drop-out rate for girls, particularly in rural areas. The Committee notes with concern the growing disparity within the education system owing to the parallel systems of private and public schools which results ultimately in racial segregation at school on the basis of the economic status of parents." (Zimbabwe CRC/C/15/Add.55, para. 19)

"The Committee is ... concerned that insufficient resources are allocated to human development projects and the emerging gaps developing between those who can afford private education ... and those who cannot ... In relation with the growing role of private educational ... institutions, the Committee recommends that a stronger emphasis be placed on public education ... by the Government with a view to ensuring that all children subject to the jurisdiction of the State Party enjoy these fundamental rights, as well as to prevent any risk of discrimination." (Lebanon CRC/C/15/Add.54, paras. 12 and 30)

When Lebanon submitted its Second Report the Committee reiterated its concern that

"public education is not entirely free"

and that there was a risk of discrimination in the

"growing role of private educational institutions" (Lebanon CRC/C/15/Add.169, paras. 48 and 49).

This latter concern was again repeated in the Committee's Third Concluding Observations, though the Committee welcomed the proposal to raise the age for compulsory education from 12 to 15 (Lebanon CRC/C/LBN/CO/3, para. 63).

"Offering financial assistance in case of need" can also be interpreted to mean giving grants to families who would otherwise depend on their children's labour as a source of income, thus withdrawing them from school.

Subparagraph (b) of article 28 refers to "different forms of secondary education, including general and vocational education". The Convention singles out vocational education for obvious reasons. Education must have relevance to the child's current and future life; vocational and work-related training is both educational in its own right and provides a strong inducement for the child to stay in school (see "preventing drop-out" below, page 426). But the Committee has also encouraged States to develop "alternative educational programmes" which suggests that countries must have flexible curricula and delivery systems to respond to the needs of the child within his or her social setting. Burundi was particularly encouraged to ensure that children with disabilities had access to vocational opportunities (Burundi CRC/C/15/Add.133, para. 65). However, care must be taken not to use selection at the secondary stage to blight children's life chances. The Committee raised this concern with several countries:

"The Committee ... is ... concerned about the determination of the child's academic ability at the early age of 11 ... The Committee recommends that the State Party increase its efforts in educational reform, including through careful study of the impact of secondary school entrance exams at the age of 11..." (Barbados CRC/C/15/Add.103, para. 27)

"The Committee is also concerned that, owing to the entrance examination system, not all students are guaranteed entry into the free public secondary schools.
"The Committee recommends that the State Party... take further measures to facilitate access to education by children from all groups in society by, inter alia, *building more schools, improving the provision of school materials, and abolishing the entrance examination system so as to guarantee all students access to public secondary schools..."* (Antigua and Barbuda CRC/C/15/Add. 247, paras. 57 and 59)

"The Committee is concerned that [proposed reforms] may introduce an element of unfair classification in accessing the national secondary schools based upon a high cut-off mark..." (Mauritius CRC/C/MUS/CO/3, para. 60)

The purpose of vocational opportunities is to increase opportunity, as the Committee stressed to Costa Rica:

"The Committee takes note of new projects which provide opportunities of education for children who have left school before completion. Although courses and institutions for technical and vocational training were expanded, the Committee regrets that not more children between the ages of 15 and 18 receive vocational training in order to facilitate their transition to qualified labour..." (Costa Rica CRC/C/15/Add.266, para. 45)

At what point secondary education begins and ends is unclear; ages vary from country to country. But, given the common age of entry to primary education is six years old, and the Committee has indicated that primary and secondary education should last in total at least nine years, then secondary school would normally end at the age of 15. This accords with provisions relating to the minimum age for employment. Under article 2 of the ILO Minimum Age Convention, 1973 (No.138) this minimum age "shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years". Failure to synchronize school-leaving age and the minimum age for employment is a frequent cause of concern. For example:

"... the legislative discrepancy between the age for completion of mandatory education and the minimum age for admission to employment may lead to encourage adolescents to drop out from the school system." (Tunisia CRC/C/15/Add.39, para. 9)

"... the failure to provide for an age for the completion of compulsory education as required by the Constitution of Guatemala as well as by article 2 of ILO Convention No.138 is a matter of considerable concern to the Committee ...
The Committee ... recommends that the State Party set the age for completion of compulsory schooling at 15 and consider raising the minimum age of employment to 15." (Guatemala CRC/C/15/Add.58, paras. 15 and 26)

"The Committee notes that education is compulsory for children between the ages of 7 and 12 years and that the legal minimum age for employment is 14 years. The Committee is concerned that insufficient legal and other measures have been taken to protect adequately the rights of children between the ages of 12 and 14 years, who are beyond the age of compulsory education but too young to be legally employed.
"The Committee recommends that the State Party raise the legal maximum age of compulsory education from 12 to at least 14 years to protect the rights of those children between the ages of 12 and 14 years, who are beyond the age of compulsory education but too young to be legally employed." (Suriname CRC/C/15/Add.130, paras. 23 and 24. See also article 32, page 479.)

Early years; pre-school education

The Convention does not specifically mention States' duties to provide for children before the age of primary education. However, the Committee has increasingly taken note of educational provision for pre-school-aged children and now asks States to provide the percentage of children who attend pre-school education in their Periodic Reports (see page 703). The Committee's General Comment No. 7 on "Implementing child rights in early childhood" explains the importance it gives to pre-school provision:

"... The Committee recognizes with appreciation that some States Parties are planning to make one year of pre-school education available and free of cost for all children. The Committee interprets the right to education during early childhood as beginning at birth and closely linked to young children's right to maximum development (art. 6(2)). Linking education to development is elaborated in article 29(1): 'States Parties agree that the education of the child shall be directed to ... the development of the child's personality, talents and mental and physical abilities to their fullest potential'. General Comment No. 1 on 'The aims of education' explains that the goal is to 'empower the child by developing his or her skills, learning and other capacities, human dignity, self esteem and self confidence' and that this must be achieved in ways that are child centred, child friendly and reflect the rights and inherent dignity of the child (para. 2). States Parties are reminded that children's right to education include all children, and that girls should be enabled to participate in education, without discrimination of any kind (art. 2).
"... The Committee calls on States Parties to ensure that all young children receive education in the broadest sense... which acknowledges a key role for parents, wider family and community, as well as the contribution of organized programmes of early childhood education provided by the State, the community or civil society institutions. Research evidence demonstrates the potential for quality education programmes to have a positive impact on young children's successful transition to primary school, their educational progress and their long-term

social adjustment. Many countries and regions now provide comprehensive early education starting at 4 years old, which in some countries is integrated with childcare for working parents. Acknowledging that traditional divisions between 'care' and 'education' services have not always been in children's best interests, the concept of 'Educare' is sometimes used to signal a shift towards integrated services, and reinforces the recognition of the need for a coordinated, holistic, multisectoral approach to early childhood." (Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, paras. 28 and 30)

The Committee, for example commended "with great appreciation" the fact that 90 per cent of Costa Rican children attend pre-school (Costa Rica CRC/C/15/Add.266, para. 45) and that in Jordan:

"As regards pre-school education, the Committee notes with satisfaction that the percentage of children enrolled in kindergartens has risen and that the State Party has taken several measures, including the preparation of a national interactive curriculum for kindergartens, to respond to the growing needs of pre-school education." (Jordan CRC/C/JOR/CO/3, para. 75)

And it has expressed regret that:

"... at least one year of pre-school was not made compulsory." (Albania CRC/15/Add.249, para. 6)

"... no central authority is in charge of the pre-school education." (Lebanon CRC/C/LBN/CO/3, para. 63)

"... necessary resources have not been allocated to ensure that pre-schools will have sufficient human and material resources to be free and accessible to all by 2008/9." (Mexico CRC/C/MEX/CO/3, para. 56)

The Committee has made clear that it expects States to provide early childhood education for children below the age of compulsory primary education:

"The Committee recommends that the State Party ... raise awareness of the importance of early childhood education and introduce it into the general framework of education..." (India CRC/C/15/Add.228, para. 65)

"The Committee recommends that the State Party continue to allocate adequate financial, human and technical resources in order to... provide access to early childhood education for every child and raise awareness and motivation of parents with respect to pre-schools and early-learning opportunities, by taking into account the Committee's General Comment No. 7 (2005) on implementing child rights in early childhood and establishing a national mechanism to promote, develop and coordinate early childhood education..." (Lebanon CRC/C/LBN/CO/3, para. 64)

"(c) Make higher education accessible to all on the basis of capacity by every appropriate means"

Although, by and large, higher education is pursued after the age the Convention defines as "childhood", the Convention correctly includes access to higher education as an integral part of children's rights, albeit one exercisable "on the basis of capacity". The Committee has not spent much time considering how countries have implemented their obligations under article 28(1)(c) but has occasionally taken note of forms of discrimination in this regard. For example:

"The Committee remains concerned... that political background, opinions and activities can have an influence on admission to higher education..." (Democratic People's Republic of Korea CRC/C/15/Add.239, para. 54)

"The Committee is... concerned about well-documented information that a large number of Baha'i students were not admitted to university on the grounds of their religious affiliation." (Islamic Republic of Iran CRC/C/15/Add.254, para. 59)

In order to meet higher education obligations under the Convention, States should at the least introduce measures enabling poor children to take entrance examinations to higher education courses and to be awarded grants or scholarships if they succeed, on the basis of equality of opportunity. The Committee expressed concern that in Japan:

"... Excessive competition for entry into higher education means that public school education must be supplemented by private tutoring, which is not affordable for children from poorer families." (Japan CRC/C/15/Add.231, para. 49)

The phrase "on the basis of capacity" should not be focused solely on success in examinations, arguably a teachable skill that can lead to a distortion in favour of high-income families and private education, but should include other measures of capacities. It may be noted that higher education for girls may have the secondary, positive effect of postponing early marriage and early motherhood.

"(d) Make educational and vocational information and guidance available and accessible to all children"

Again, the Committee has not focused on this right directly and, to an extent, it could be

article 28

assumed that if all children are to have access to education and vocational training then they will be informed and guided as to what is available. Nonetheless, it is not something that should be taken for granted. Schools, communities and families may be fixed in narrow expectations about what children will do in their future lives or be poorly informed about changing opportunities and requirements in terms of vocations. Children can only develop their potential if a range of opportunities are available and they know how to obtain information about them.

"(e) Take measures to ensure regular attendance at schools and the reduction of drop-out rates"

The phenomenon of children dropping out of school is worldwide. Poverty may be the driving motivation in many societies – the child may need to work or the expense of education may be the disincentive. But even in developing countries, children drop out of school for other reasons, for example, because the curriculum is too dull, difficult or irrelevant; because the teaching is poor or not delivered in the child's first language; because school discipline is over-punitive and disrespectful of dignity; because learning disabilities have not been identified and helped. Compelling children to repeat years has been found to be both wasteful of resources and likely to cause children to drop out of school.

Subparagraph (e) is, therefore, extremely important because it extends the State's responsibilities beyond simply channelling sufficient resources into schools and passing laws compelling children to attend those schools – States must also take steps to ensure that what happens in school is sufficiently useful and attractive to keep children there.

The Committee has taken a keen interest in States' implementation of this obligation, not least because the children who drop out often come from the groups generally discriminated against in education – namely girls, children from rural areas, children from minority groups, children in difficult circumstances and children with disabilities. The Committee has encouraged countries to give priority to a variety of measures combating school drop-out, including careful analysis of its causes. These can be various, as the Committee pointed out to Estonia:

"The Committee... appreciates the acknowledgment by the State Party that there are challenges facing the right to education. In this regard, it shares the concern that more than 5,000 children do not attend school, and repetition and drop-out rates are high. Possible reasons for drop-outs include: lack of security from bullying, overcrowded classrooms, poor school environment as a result of diminished extra-curricular activities, overburdened teachers and closure of schools in rural areas for economic reasons." (Estonia CRC/C/15/Add.196, para. 42)

One crucial factor is, of course, the ability of teachers to inspire children to learn. The Committee is often concerned about the quality of teaching, and teachers' conditions:

"With a view to assuring a better quality of education, the Committee further urges the State Party to encourage trained teachers who have left the State Party to return, to strengthen teacher training courses so as to increase the number and standard of teachers, and to invest sufficient resources in the education system to provide adequate school facilities, materials and salaries for teachers..." (Sierra Leone CRC/C/15/Add.116, para. 66)

"The Committee recommends ... that the State Party continue to take measures to improve its education system by increasing budget allocations for the education sector; providing training to upgrade teachers' skills; making the school curricula more relevant to children's needs; expanding opportunities for vocational training and non-formal education, including at pre-school and secondary levels; and establishing an evaluation system to measure the effectiveness of the education system." (Cambodia CRC/C/15/Add.128, para. 55)

"The Committee is concerned about... the lack of adequate training of teachers, teachers' low salaries, which may lead to loss of motivation, high turnover rates, migration abroad and little interest in professional development..." (Nicaragua CRC/C/15/Add.265, para. 54)

The *Guidelines for Periodic Reports (Revised 2005)*, unusually, asks States to "specify the nature and extent of cooperation with local and national organizations of a governmental or non-governmental nature, such as teachers' associations, concerning implementation of this part of the Convention [articles 28, 29 and 31]" (CRC/C/58/Rev.1, para. 34, see page 701).

Measures to combat school drop-out rates include recognizing the financial circumstances of the children. For example, the Committee commented to Honduras in relation to its "high incidence of school drop-out":

"... In this regard, the Committee takes note of the suggestion of the Government which has not yet been implemented to organize the school year around the agricultural seasons

with a view to organizing school vacations at sowing and harvesting periods. Equally, the Committee would like to suggest that the State Party give consideration to the provision of meals and to complement the provision of health care through the schools." (Honduras CRC/C/15/Add.24, para. 31)

Guatemala was encouraged to:

"... implement the 'Food for Education Programme' as an incentive for children to attend school." (Guatemala CRC/C/15/Add.58, para. 36)

And Kyrgyzstan to:

"... Take measures to create more favourable conditions at schools (e.g. improvement of heating and electricity facilities as well as more friendly and less abusive environments) in order to tackle the high drop-out rates..." (Kyrgyzstan CRC/C/15/Add.244, para. 54)

The Committee has suggested improvements to schooling to reduce drop-out rates, especially to the "appropriateness" of education. The Committee recommended that the Seychelles:

"... Undertake a study of the reasons why students drop out of school in order to develop solutions that ensure their continuing educational or vocational training, and further opportunities for employment and integration into society..." (Seychelles CRC/C/15/Add.189, para. 49)

Making school more attractive is often seen in terms of better vocational education, for example the Committee recommended that China:

"Promote the development of flexible learning systems so that children who have dropped out of school, in particular because of poverty or migration, are able to complete compulsory education and earn appropriate accreditation through non formal channels, and also ensure the availability and accessibility of suitable technical and vocational education and training..." (China CRC/C/CHN/CO/2, para. 78)

And Costa Rica:

"Provide more demand-driven technical and vocational training and organize vocational counselling for children; provide opportunities for children outside schools and working children so that they can get as much education as possible by specific programmes tailored to their life conditions; ensure the provision of adequate financial and human resources for the effective implementation of the educational programmes and expand scholarship and other programmes of assistance to students; [and] seek technical assistance from the United Nations Educational, Scientific and Cultural Organization (UNESCO) and UNICEF." (Costa Rica CRC/C/15/Add.265, para. 56)

Where high drop-out rates are found within minority groups, solutions may need to be found through, for example, programmes which show respect for minority and indigenous cultures and languages, and which accommodates nomadic or otherwise different lifestyles. Such an approach encourages pupils' self-esteem and thus their motivation:

"The Committee ... is concerned at ... the high drop-out rates, particularly among adolescents as well as rural, indigenous and migrant children; and the low quality of teaching. The insufficient bilingual intercultural education in indigenous areas is also a cause of concern as it negatively affects the drop-out rate in these areas.
"The Committee recommends that the State Party... strengthen measures to reduce the high drop-out rate among indigenous children, inter alia *by providing them with bilingual and bicultural education; ... take measures to identify the causes of the high drop-out rate in schools, particularly in rural areas and in secondary schools, and to take steps to address the situation... strengthen educational and vocational programmes, in particular for children who do not attend regular school education, especially migrant children..."* (Mexico CRC/C/MEX/CO/3, paras. 56 and 57)

The drop-out rates of Roma children in a number of European States has concerned the Committee, for example in Finland's first, second and third examinations:

"The Committee reiterates its concern at the high rates of school drop-outs among Roma children." (Finland CRC/C/15/Add.53, para. 18)

"The Committee notes the measures undertaken by the State Party to develop special education and prevent social exclusion, such as strengthening the status of the Roma language in school teaching, developing teaching material in the Roma language and training teachers, and recommends they be implemented. It requests the State Party to continue its efforts in this area and to provide information on the impact of these measures on Roma children in the next periodic report to the Committee." (Finland CRC/C/15/Add.132, para. 60)

"While noting the State Party's efforts in this regard, the Committee expresses concern at the high drop-out rate from school among Roma children and at their difficulties in accessing education, which negatively impact their development and future access to employment. In addition the Committee also notes with concern the lack of teachers and pre-school teaching material in the Roma language." (Finland CRC/C/15/Add.272, para. 42)

One strategy encouraged by the Committee is the involvement of ethnic minorities in education administration:

"... the Committee recommends the State Party to promote the participation of parents and communities, especially ethnic minorities, in school governance, to improve enrolment rates and monitor the quality of education." (Tajikistan CRC/C/15/Add.136, para. 43)

As discussed above, girls often drop out of school. Girls' physical safety may also be a factor:

"However, the Committee is concerned that ... school drop-out rate is high and that gender-based discrimination persists within schools. Other concerns include reports of abuse and sexual molestation, especially of girls,..." (Bangladesh CRC/C/15/Add.221, para. 63)

The Committee has also noted the negative effect on education of teenage pregnancy:

"The Committee is concerned about the high rate of early pregnancy, which has negative effects on the health of the mothers and the babies, and on the mothers' enjoyment of their right to education, hampering the school attendance of the girls concerned and causing high numbers of school drop-outs...
"With regard to the high rate of early pregnancy prevailing in Uruguay, the Committee recommends that measures be adopted to provide appropriate family education and services for young people within the school and health programmes implemented in the country." (Uruguay CRC/C/15/Add.62, paras. 12 and 22)

The Committee was concerned that teenage mothers were not able to re-enter the educational system in one of the islands of Saint Kitts and Nevis. It also raised the issue of boys' drop-out rates :

"While recognizing the efforts made by the State Party in the area of education, the Committee remains concerned at the high drop-out rate for males in the upper grades of primary school, the poor reading ability of primary school males, the high incidence of truancy, lack of relevant learning material, insufficient numbers of trained and qualified teachers, and the tendency towards teaching methods that are almost exclusively exam-oriented... The Committee recommends that the State Party review its educational programme with a view to improving its quality and relevance ... The Committee further recommends that the State Party seek to implement additional measures to encourage children, especially boys, to stay in school, particularly during the period of compulsory education." (Saint Kitts and Nevis CRC/C/15/Add.104, para. 28)

The Committee also identified the active participation of children in their schooling as a strategy to reduce high drop-out rates:

"... further steps should be taken to develop guidelines for the participation of all children in the life of the school." (Nigeria CRC/C/15/Add.61, para. 38)

"The Committee ... is ... concerned that children do not have the right to participate in the evaluation of their school achievements. "The Committee recommends that education in the State Party be directed towards the development, with the active participation of the child, of the child's personality, talents and mental and physical abilities to their fullest potential, in accordance with article 29 of the Convention." (Slovakia CRC/C/15/Add.140, paras. 45 and 46)

As discussed under article 12 (page 167), the consideration of children's views on their education is, in any event, an obligation under the Convention, but it is also an effective method of reducing pupil disaffection. Above all, as the Committee encouraged Georgia, schools should be "child friendly" (Georgia CRC/C/15/Add.124, para. 53).

The right to school discipline "consistent with the child's human dignity and in conformity with the present Convention"

Paragraph (2) of article 28 does not have precedent in other treaties relating to education, although of course there are provisions preventing degrading and inhuman treatment generally. The Committee on the Rights of the Child has made clear that all forms of corporal punishment, however light, are unacceptable forms of discipline in schools or elsewhere (see article 19, page 264).

It confirms this in its General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment", in which the Committee states:

"... the Convention, like all human rights instruments, must be regarded as a living instrument, whose interpretation develops over time. In the 17 years since the Convention was adopted, the prevalence of corporal punishment of children in their homes, schools and other institutions has become more visible, through the reporting process under the Convention and through research and advocacy by, among others, national human rights institutions and non-governmental organizations (NGOs).

"Once visible, it is clear that the practice directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity. 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.
"The Committee emphasizes that eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation of States Parties…" (Committee on the Rights of the Child, General Comment No. 8, 2006, CRC/C/GC/8, paras. 20 to 22)

The phrase in article 28 that discipline must be "in conformity with the present Convention" underlines the fact that the obligation in article 19 to protect the child from "all forms of physical or mental violence, injury or abuse" applies to schools and other educational establishments as well as the family home and child-care institutions.

In addition, among the agreed aims of education under article 29 are respect for others and education "in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples" (article 29(1)(d)). The Committee's first General Comment on "The aims of education" provides:

"… education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with article 12(1) and to participate in school life. Education must also be provided in a way that respects the strict limits on discipline reflected in article 28(2) and promotes non-violence in school. The Committee has repeatedly made clear in its Concluding Observations that the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline. Compliance with the values recognized in article 29(1) clearly requires that schools be child friendly in the fullest sense of the term and that they be consistent in all respects with the dignity of the child. The participation of children in school life, the creation of school communities and student councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realization of rights." (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 8)

In its 1999 General Comment on the right to education, the Committee on Economic, Social and Cultural Rights also confirmed: "In the Committee's view, corporal punishment is inconsistent with the fundamental guiding principle of international human rights law… A State Party is required to take measures to ensure that discipline which is inconsistent with the Covenant does not occur in any public or private educational institution within its jurisdiction. The Committee welcomes initiatives taken by some States Parties which actively encourage schools to introduce 'positive', non-violent approaches to school discipline." (Committee on Economic, Social and Cultural Rights, General Comment No. 13, 1999, HRI/GEN/1/Rev.8, para. 41, p. 79)

The 2006 United Nations Secretary-General's Study on Violence Against Children reports that 102 States have banned corporal punishment in schools, though enforcement is uneven (Report of the independent expert for the United Nations study on violence against children, General Assembly, sixty-first session, August 2006, A/61/299, p. 28). Countries that have not banned it effectively in all schools are thus likely to have the matter raised by the Committee. For example Pakistan:

"… the Committee remains deeply concerned that … the code of conduct for teachers does not prohibit corporal punishment, nor does it deal with the problem of violence against children in school.
"The Committee is very concerned about reports of violence and sexual abuse within madrasas.
"The Committee recommends that the State Party… take proactive measures to eliminate violence against children in schools, notably by including in the code of conduct for teachers the prohibition of corporal punishment and by limiting the role of school counsellors to those functions that help the pupil and revoking their disciplinary functions." (Pakistan CRC/C/15/Add.217, paras. 60, 61 and 63)

Guatemala was recommended to adopt "a campaign against corporal punishment" in schools and elsewhere (Guatemala CRC/C/15/Add.58, para. 33). Zimbabwe was informed that

"... the Committee stresses the incompatibility of corporal punishment with the provisions of ... article ... 28 paragraph 2".

The Committee recommended that Zimbabwe

"... adopt appropriate legislative measures to forbid the use of any form of corporal punishment within the family and in school." (Zimbabwe CRC/C/15/Add.55, paras. 18 and 31)

The prohibition of corporal punishment does not just relate to state-funded schools – the practice must be banned in private schools as well. The Committee raised concerns that in the United Kingdom,

"... privately funded and managed schools are permitted to administer corporal punishment to children in attendance there which does not appear to be compatible with the provisions of the Convention, including those of its article 28, paragraph 2".

The Committee recommended that legislation be introduced to ban its use in private schools, a Committee member commenting: "... The right not to receive corporal punishment was a fundamental right, and one could not therefore lay down a different regime according to whether the school was public or private, all the more so as that would give rise to the question of discrimination and the application of article 2 of the Convention to the education system, since whether a child was sent to a state or private school was generally linked to the family's standard of living." (United Kingdom CRC/C/15/Add.34, para. 16 and CRC/C/SR.206, para. 5) The United Kingdom subsequently took steps to prohibit corporal punishment in private schools (United Kingdom CRC/C/83/Add.3).

Nor is it enough to legislate against corporal punishment – measures should be taken to make sure it does not occur even when against the law, as in Hungary:

"The Committee is concerned that corporal punishment in schools, despite being prohibited by the Hungarian Child Education Act, continues to occur.
"The Committee recommends that the State Party undertake measures, including corrective ones, in order to sensitize professionals within the educational system, in particular teachers, about their obligation to refrain from resorting to corporal punishment. In addition, the Committee recommends that awareness-raising campaigns be implemented in order to inform children of their rights." (Hungary CRC/C/HUN/CO/2, paras. 54 and 55)

And measures must be available for children to protect themselves:

"The Committee recommends the State Party... provide children with a safe school environment by, inter alia, *taking all necessary steps to prevent abuse and exploitation of children by school personnel, taking effective disciplinary measures against school personnel who have committed those offences and reporting these incidences to the competent authorities, notably through child-sensitive structures for complaints..." (Malawi CRC/C/15/Add.174, para. 56)*

Corporal punishment is not the only form of school discipline to breach article 28: public humiliation, for instance, is not consistent with the child's human dignity (see the Committee's full definition of corporal punishment and other forms of cruel or degrading punishment, article 19, page 262). And care should be taken not to violate other rights under the Convention. For example, punishments that stop children's access to their parents or friends, which deny children's rest or leisure or that interfere with their right to enjoy their language or culture would be in breach of rights under the Convention and of article 28(2). The Committee reminded the Holy See that

"... teaching methods used in schools should reflect the spirit and philosophy of the Convention." (Holy See CRC/C/15/Add.46, para. 12)

The Committee on Economic, Social and Cultural Rights confirms this in its General Comment on the right to education after condemning corporal punishment: "Other aspects of school discipline may also be inconsistent with human dignity, such as public humiliation. Nor should any form of discipline breach other rights under the Covenant, such as the right to food." (Committee on Economic, Social and Cultural Rights, General Comment No. 11, 1999, HRI/GEN/1/Rev.8, para. 41, p. 79)

The ultimate sanction used by schools against troublesome pupils is their expulsion. The procedures for doing so ought to conform to the principles of natural justice and, particularly, should not discriminate; nor may the child be denied education as a result of a disciplinary exclusion. The Committee raised these matters with Ireland and the United Kingdom:

"The Committee is concerned about the situation of children who are excluded from schools because of sanctions imposed by teachers and the adverse effect generated which may sometimes impact on drop-out rates and school attendance." (Ireland CRC/C/15/Add.85, para. 22)

"... the Committee recommends that the State Party... take appropriate measures to reduce temporary or permanent exclusion, ensure that children throughout the State Party have the right to be heard before exclusion and to appeal against temporary and permanent exclusion, and ensure that children who are excluded do continue to have access to full-time education..." (United Kingdom CRC/C/15/Add.188, para. 48)

Discipline should also reflect the principles of article 12, including the child's right to complaints procedures:

"It is recommended that the State Party encourage child participation within the school environment, including in disciplinary matters." (Suriname CRC/C/15/Add.130, para. 52)

"… the Committee recommends that the State Party… ensure that legislation throughout the State Party reflects article 12 and respects children's rights to express their views and have them given due weight in all matters concerning their education, including school discipline;…" (United Kingdom CRC/C/15/Add.188, para. 48)

"The Committee recommends that the State Party … provide children with a safe school environment by, inter alia*, taking all necessary steps to prevent abuse and exploitation of children by school personnel, taking effective disciplinary measures against school personnel who have committed those offences and encouraging the reporting of these incidences to the competent authorities, notably through child-sensitive structures for complaints…" (Zambia CRC/C/15/Add.206, para. 57)*

Bullying

Part of effective school discipline is ensuring that pupils, as well as teachers, refrain from violence. Bullying between pupils has always occurred in schools, but is increasingly being exposed and challenged as unacceptable; States now accept that they have an obligation to protect children from violence from their peers as well as from adults. The Committee often expresses concern about bullying:

"The Committee is concerned at the frequency and level of violence in schools, especially the widespread use of corporal punishment and the existence of numerous cases of bullying among students. While legislation prohibiting corporal punishment and such measures as hot lines for victims of bullying do exist, the Committee notes with concern that current measures have been insufficient to prevent school violence.
"… the Committee recommends that a comprehensive programme be devised and its implementation closely monitored in order to prevent violence in schools, especially with a view to eliminating corporal punishment and bullying." (Japan CRC/C/15/Add.90, paras. 24 and 45)

"… The Committee welcomes the measure taken to combat bullying in schools, such as the National Safe School Framework and the 'Bullying. No Way!' website, but it shares the State Party's concern regarding the impact that this pervasive practice has on the affected children, especially on their psychological health, educational achievements and social development.
"The Committee recommends that the State Party… continue to take appropriate measures to combat the phenomenon of bullying in schools, including by carrying out periodic surveys among students, staff and parents to learn more about the peer relations being fostered by the school." (Australia CRC/C/15/Add.268, paras. 60 and 61)

"The Committee welcomes the measures taken by the State Party to tackle violence and bullying in schools, including the requirement that every school has to develop an action plan against bullying and violence, but is concerned that these behaviours are still quite common, especially towards children with disabilities and children with disabled parents.
"The Committee recommends that the State Party continue to take appropriate measures to combat the phenomenon of bullying and violence in schools with the full involvement of children, including by carrying out periodic surveys among students, staff and parents about the quality of peer relations being fostered by the school. There should be special focus on bullying and violence towards children with disabilities and children with disabled parents." (Finland CRC/C/15/Add.272, paras. 46 and 47)

"The Committee notes with deep concern reports that violence (bullying) in schools is widespread, particularly among students.
"The Committee recommends that the State Party develop a comprehensive strategy addressing the culture of violence and its correlation with high levels of bullying amongst schoolchildren. The Committee also recommends that the State Party establish adequate programmes and activities with a view to creating an environment of tolerance, peace and understanding of cultural diversity shared by all children to prevent intolerance, bullying and discrimination in schools and society at large." (Lithuania CRC/C/LTU/CO/2, paras. 56 and 57)

There are, of course, no easy answers to endemic violence in schools and institutions, since simplistic punitive responses are likely to make the situation worse, or penalize children who may be victims of violence as well as perpetrators. The Committee recommends that States implement carefully thought-through measures which take into account the views of children themselves, as in its recommendations to Slovenia and Italy:

"The Committee recommends that the State Party… take measures to set up adequate mechanisms and structures with the participation of children to prevent bullying and other forms of violence in schools and include children in the development and implementation of these strategies; ensure that legislation throughout the State Party reflects article 12 of the Convention and respects children's rights to express their views and have them given due weight in all matters concerning their education, including school discipline." (Italy CRC/C/15/Add.198, para. 44)

"The Committee notes with concern the high incidence of violence in schools on the part of teachers or staff and peer violence and bullying, including inappropriate and offensive attitudes on the part of some teachers towards pupils. It welcomes in this regard the appointment of the Commission for Analysis of the Problem of Violence in Slovene Education in 2003 charged with providing proposals for measures to deal with cases of violence, including regular additional training for teachers.
"The Committee recommends that the State Party take all measures to ensure that discipline in schools is upheld in a manner that respects the human dignity of the child. It also encourages the State Party to ensure that the commission appointed by the Minister of Education to analyse the problem of violence in Slovene education be given adequate support. Furthermore, the Committee recommends that the State Party strengthen measures to address the general problem of violence among adolescents, inter alia, *through education and awareness-raising campaigns."* (Slovenia CRC/C/15/Add.230, paras. 38 and 39)

The promotion of international cooperation in education, particularly taking account of the needs of developing countries

Education has been shown to be one of the key components of development, both for individual children and for countries as a whole. Educational advances bring benefits to all, with positive correlations shown between educational progress and improvements to children's life chances, national economic performance, agricultural productivity and birth rates. Both UNICEF and UNESCO have invested extensive expertise, resources and energy in education. In addition countries should learn from each other on how best to educate children.

A significant proportion of development aid should, therefore, be directed at assisting education programmes. In addition, countries should learn from each other how best to educate children, including the scientific know-how and modern teaching methods mentioned in paragraph 3 of article 28. The *Manual on Human Rights Reporting,* 1997, advises that "programmes of international technical cooperation should therefore include in their agenda the training of teachers, their acquisition of modern pedagogic skills and the improvement of their competence. They may in fact play an instrumental role in fostering the role of education." (*Manual,* p. 465)

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 28, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 28 is relevant to the **departments of education and labour**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 28 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 28 likely to include the training of **teachers, education administrators and vocational guidance personnel**)?

• Specific issues in implementing article 28

- ☐ Do budget allocations aim for a progressive increase in education provision and a progressive development of the quality of education?
- ☐ Does education policy ensure progress towards maximum take-up of educational opportunities by all children (up to the age of 18)?
- ☐ Is there an established time-frame for achieving this policy?
- ☐ Has the State adopted mechanisms to measure the effectiveness of its education provision in terms of take-up and outcomes for all children within the jurisdiction?

Are active measures taken to ensure that all children have equal educational opportunities, including all

- ☐ girls?
- ☐ children from rural areas?
- ☐ children from minority cultures and indigenous groups?
- ☐ children with disabilities?
- ☐ sick, including hospitalized, children?

How to use the checklist, *see page XIX*

article 28

- ☐ immigrant and refugee children?
- ☐ children living away from their families?
- ☐ nomadic or gypsy children or children in temporary accommodation?
- ☐ children excluded from school?
- ☐ children in all forms of detention?

☐ Is primary education compulsory?
- ☐ If not, is there a national plan for ensuring that all children receive free and compulsory primary education?

☐ Is primary education free to all children?
☐ Are all aspects of this education free (for example books, equipment or uniform (if any))?
☐ Are different forms of secondary education, including vocational and general education, available to every child?
☐ Are these free?
- ☐ If not, are measures being taken to develop the accessibility of secondary education to every child, for example by offering financial assistance to those in need?

☐ Are the legal ages for completion of compulsory education and admission to employment the same?
☐ Where this age is below 15, are steps being taken to raise this age?
☐ Is higher education accessible to all children on the basis of capacity?
☐ Is educational and vocational information and guidance made available and accessible to all children?
☐ What measures have been adopted to encourage school attendance and prevent school drop-out?

Do these measures take into account
- ☐ the child's home circumstances (such as a need to secure an income, to do domestic chores or to work at harvest time)?
- ☐ the appropriate geographical location of schools and their hours and times of opening?
- ☐ the relevance of the curriculum to the child's life and the provision of vocational education?
- ☐ the appropriateness of the curriculum to the child's intellectual development?
- ☐ the child's first language?
- ☐ any special needs of the child (such as disability, sickness or pregnancy)?
- ☐ respect for cultural or religious traditions and gender difference?
- ☐ respect for the child's views?
- ☐ respect for the child's dignity?
- ☐ identification of learning difficulties and help provided to avoid exam failure or forced repetition of grade years or classes?
- ☐ the need to involve the local community in the delivery of education and the need to involve schools in the life of the community?

How to use the checklist, *see page XIX*

- ☐ the effectiveness of teacher recruitment and training in preventing school disaffection?
- ☐ Have all appropriate measures been taken to ensure that all forms of school discipline are consistent with the child's human dignity?
- ☐ Is corporal punishment and other cruel or degrading forms of punishment prohibited by law in all schools?
- ☐ Have all appropriate measures been taken to ensure that corporal punishment and other cruel or degrading punishments are never used?

Do all forms of school discipline conform with the Convention, including the child's right

- ☐ not to be discriminated against?
- ☐ to be treated in a manner consistent with his or her evolving capacities?
- ☐ to maintain direct contact with both parents on a regular basis (save where contrary to best interests)?
- ☐ to freedom of expression, thought, conscience and religion?
- ☐ to freedom of association (save where it is necessary to protect others)?
- ☐ to privacy?
- ☐ to protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation?
- ☐ to his or her identity, culture and language?
- ☐ to rest and leisure?
- ☐ to social inclusion and reintegration?

- ☐ Are schools required to maintain measures to combat bullying?
- ☐ Is an appropriate level of development aid sought for, or directed at, educational programmes?

Do programmes of international technical cooperation include

- ☐ teacher training methods?
- ☐ access to scientific and technical knowledge?
- ☐ the effective delivery of primary and secondary education?

Reminder: **The Convention is indivisible and its articles interdependent. Article 28 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

How to use the checklist, *see page XIX*

Closely related articles

Articles whose implementation is particularly related to that of article 28 include:

Article 13: freedom of expression
Article 14: freedom of thought, conscience and religion
Article 15: freedom of association
Article 16: protection of privacy
Article 17: access to information and role of media
Article 19: protection from all forms of violence
Article 23: children with disabilities
Article 24: health (including health education)
Article 29: aims of education
Article 30: children of minorities or of indigenous peoples
Article 31: rest, leisure, play, recreation and culture
Article 32: child labour

The aims of education

Text of Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 29(1) reflects a consensus of world opinion about the fundamental purposes of education and is the subject of the Committee's first General Comment (see box for summary, page 439). It does not detail the tools of learning, such as literacy, numeracy, factual knowledge, problem-solving and so forth, but addresses learning's basic aims:

"... to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote a

Summary

culture which is infused by appropriate human rights values. The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence." *(Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 2)*

Article 29(2) explicitly preserves the rights of individuals and groups to arrange their own forms of education, so long as these fulfil the aims of education as set out in the article, respect the child's other rights under the Convention and any national minimum standards. ■

Background

Article 26 of the Universal Declaration of Human Rights provides that: "Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace."

Those words were adapted in the International Covenant on Economic, Social and Cultural Rights, with the italicized additions: "[States Parties] agree that education 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. They further agree that *education shall enable all persons to participate effectively in a free society*, promote understanding, tolerance and friendship among all nations and all racial, *ethnic* or religious groups, and further the activities of the United Nations for the maintenance of peace." (Article 13(1))

The Convention on the Rights of the Child uses these provisions as a starting point and significantly develops them, as discussed below. In early drafts, the aims of education were originally conceived as "the aims of education and upbringing" but this was discarded as too broad and ill-defined a concept. Several countries were concerned about the absence of explicit reference to parents' rights to choose their children's school and to ensure children's education is in conformity with the parents' religious and moral convictions, a principle set out in article 13(3) of the Covenant on Economic, Social and Cultural Rights and article 18(4) of the Covenant on Civil and Political Rights (E/CN.4/1985/64, pp. 15 to 19; Detrick, p. 399; E/CN.4/1989/48, pp. 84 to 87; Detrick, pp. 405 to 407). As discussed in article 28 (see page 407) parental rights are implicitly recognized elsewhere within the Convention (articles 5, 18 and 30) but operate within the framework of the child's own rights and freedoms.

International agreement on the aims of education

The governing phrase or *chapeau* of article 29(1) on the aims of education starts, uniquely: "States Parties agree..." Textually, this can, of course, be traced to the article's source in the International Covenant on Economic, Social and Cultural Rights, but it is significant that the phrase was retained for this Convention. The wording emphasizes that there is international consensus as to the aims of education which surmounts the often hostile boundaries of religion, nation and culture erected across so many parts of the world.

Two countries have reservations to article 29. Indonesia's states: "With reference to the provisions of articles... 29... the Government of the Republic of Indonesia declares that it will apply these articles in conformity with its Constitution." (CRC/C/2/Rev.8, p. 25) When Indonesia was asked to explain this reservation to the Committee, the Government representative said that there were difficulties in implementing the article in view of existing legislation (Indonesia applies a national curriculum), but that it was hoped the reservation could be withdrawn with new legislation currently in draft. The reservation has not yet been withdrawn, but Indonesia informed the Committee, when its Second Report was being examined, that this would be done shortly. (Indonesia CRC/C/15/Add.223, para. 11)

And Turkey's: "The Republic of Turkey reserves the right to interpret and to apply the provisions of articles 17, 29 and 30 of the Convention on the Rights of the Child according to the letter and spirit of the Constitution of the Republic of Turkey and of the Treaty of Lausanne of 24 July 1923." (CRC/C/2/Rev.8, p. 41)

The Committee commented that this reservation

"... may have a negative impact on children belonging to ethnic groups which are not recognized as minorities under the Treaty of Lausanne of 1923, in particular children of Kurdish origin"

and urged Turkey to withdraw the reservation *(Turkey CRC/C/15/Add.152, paras. 11 and 12).*

There are also those countries that have entered reservations to article 14, concerning the child's right to "freedom of thought, conscience and religion", which may be exercised under the direction of parents in a manner consistent with the child's evolving capacities (see page 185). Some (for example Belgium and the Netherlands) are

The aims of education

Committee on the Rights of the Child, General Comment No. 1, 2001: summary

Article 29 paragraph 1, setting out the agreed aims of education, not only adds a qualitative dimension to the rights of education recognized in article 28, it also insists on education being child-centred, child-friendly and child-empowering. The goal is to develop the child's skills, learning and other capacities, human dignity, self-esteem and self-confidence. Children's education should be directed to a wide range of values. At first sight some of these might be thought to be in conflict with each other. For example education designed to promote understanding, tolerance and friendship among all peoples might not be compatible with education designed to develop respect for the child's own cultural identity and for the national values of the country in which the child is living. But part of the importance of the article lies in its recognition of the need for a balanced approach which aims to reconcile diverse values through dialogue and respect for difference. Children are capable of playing a unique role in bridging differences that have historically separated groups of people.

Article 29 highlights the following:

1. The Convention's provisions are interconnected, so that Article 29 cannot be properly understood in isolation from them. In addition to the general principles, other relevant aspects of the Convention include the responsibilities of parents (arts. 5 and 18), freedom of expression and thought (arts. 13 and 14), the right to information, health education and education (17, 24 and 28), the rights of children with disabilities (23) and those of minority cultures (30).
2. Education must promote the enjoyment of rights, not only within the curriculum but also through teaching methods and the education environment. Children do not lose their human rights by virtue of passing through the school gates. The inherent dignity of the child must be respected, including strict limits placed on school discipline; for example the Committee has repeatedly made clear that corporal punishment is a violation of the child's rights. The child's views must be freely expressed. The creation of school communities and student councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted.
3. The key goal of education is the development of every child's personality, talents and abilities, recognizing that each individual has unique characteristics, interests, abilities and learning needs. The curriculum must be of direct relevance to the child's life and to his or her present and future needs; no child should leave school without being equipped to face all of life's challenges. Basic skills include not only literacy and numeracy but also the ability to make well-balanced decisions, to resolve conflicts in a non-violent manner and to develop a healthy lifestyle, good relationships, social responsibility, creative talents, critical thinking and other life skills. In particular, the education system must combat all forms of discrimination. For example, the curriculum must be consistent with the principle of gender equality and education environments made safe and friendly to girls; similarly children with disabilities or with HIV/AIDS must not experience direct or hidden forms of discrimination. Racism, xenophobia and cultural intolerance thrive where there is ignorance: education is the reliable antidote and should be given the highest priority in campaigns against these evils. Racist behaviour is not something only engaged in by "others". Children should be taught about how it occurred historically and how it manifests itself today, with particular focus on the child's own community.
4. Education must balance the child's physical, mental, spiritual and emotional development and balance intellectual, social and practical skills; it must focus both on the child now and on the child's future life. The overall objective is to maximize the child's ability to participate fully and responsibly in a free society. Education should be humane, inspiring and motivating. It should not give disproportionate weight to the accumulation of knowledge, which may create burdens of work and forms of competition harmful to the child's overall development.
5. Education must be designed to reinforce all the ethical values enshrined by the Convention, including education for peace, tolerance and respect for the natural environment. This may

require a multidisciplinary approach and should be rooted in the child's own community, both by identifying local problems and by engaging the child in community-based projects.

6. Children's capacity to enjoy their human rights and to participate fully in a free society can be impaired, not only by denying them access to education, but by that education failing to promote the values set out in article 29.

Article 29 calls for education to develop respect for human rights. Education should provide information on the content of human rights treaties, but children should also learn by seeing human rights standards implemented in practice. These values are relevant to children living in zones of peace but they are even more important for children living in situations of conflict or emergency. Education programmes must promote mutual understanding, prevent violence or conflict and include education about international humanitarian law.

The fact that Article 29's provisions are expressed in general terms seems to have led States to assume that they need not appear in legislation or administrative directives, which may mean they fail to inform education policies. The Committee therefore calls on all States Parties to incorporate the principles of article 29 into law and policy at all levels.

Article 29 requires the reworking of curricula, systematic revisions of textbooks and other teaching materials and changes to school policies. Pre-teaching and in-service training schemes reflecting its values are also essential. The school environment must promote human rights: a school which allows bullying or other violent and exclusionary practices violates the requirements of article 29. States should facilitate the role of children as defenders of their rights. The media also plays a vital role in disseminating (or undermining) the values of article 29.

The Committee calls on States Parties to develop a national plan of action to realize and monitor the objectives of article 29(1). This could be a part of larger plans relating to children or human rights goals. Governments should devise means to measure implementation, for example by regular surveys of all those affected – children in and out of school, teachers, parents, youth leaders and educational administrators. Where there are major violations of rights, such as racist attacks involving children, it can be assumed the Government has not done all it could in respect of article 29.

States Parties should also consider establishing procedures for reviewing complaints about violations of the Convention, which should help inform the identification of priority issues under article 29. The Committee requests that periodic reports include how these issues will be tackled by States Parties. Resource constraints are not a justification for failing to take the measures required in this respect.

(Committee on the Rights of the Child, General Comment No. 1, "The aims of education", 2001, CRC/GC/2001/1. For full text see www.ohchr.org/english/bodies/crc/comments.htm.)

declarations which emphasize the child's autonomous rights in relation to religion, but others are concerned with either parental authority to determine the child's religious upbringing or with the fact that a state religion governs the education curriculum (see article 14, page 188).

"The development of the child's personality, talents and mental and physical abilities to their fullest potential"

The degree to which an education system develops all children's potential depends in part upon the availability of education to all children on the basis of equality of opportunity, discussed under article 28 (see page 413) and the degree to which it inspires and motivates the individual child (see also article 28, in relation to school drop-out, page 426). It also vitally concerns the adequacy of educational provision for children with disabilities and learning difficulties, discussed under article 23 (see page 321).

In order to implement article 29(1) the Committee calls on States Parties to develop a "comprehensive national plan of action", adding:

"If such a plan is drawn up in the larger context of a national action plan for children, a national human rights action plan, or a national human rights education strategy, the Government must ensure that it nonetheless addresses all of the issues dealt with in article 29(1) and does so from a child-rights perspective."

This is because:

"The effective promotion of article 29(1) requires the fundamental reworking of curricula to include the various aims of education and the systematic revision of textbooks and other teaching materials and technologies, as well as school policies. Approaches which do no more than seek to superimpose the aims and values of the article on the existing system without encouraging any deeper changes are clearly inadequate. The relevant values cannot be effectively integrated into, and thus be rendered consistent with, a broader curriculum unless those who are expected to transmit, promote, teach and, as far as possible, exemplify the values have themselves been convinced of their importance. Pre-service and in-service training schemes which promote the principles reflected in article 29(1) are thus essential for teachers, educational administrators and others involved in child education." (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, paras. 23 and 18)

Article 29(1)(a) expands on the role of education, taking it beyond just the development of children's intellectual abilities, traditionally perceived as the responsibility of schools. Education should also embrace children's "talents", including talents in the creative and performing arts, crafts, sports and vocational skills; their "physical abilities", ranging from basic motor coordination skills to physical activities such as swimming, gymnastics, bicycling and ball-control; and development of their "personality". This is perhaps the greatest challenge to schools and educators. How do children learn to be kind and generous, for example, as well as literate and numerate?

Not surprisingly, the Committee has rarely been able to examine how countries fulfil these aims of education, except in terms of statistical measures such as how many children are enrolled in schools, drop out or repeat classes. Current international research on comparable standards in, for example, mathematics or science shows striking variations which do not correspond to the countries' wealth or economic investment in education. Similar comparisons could be sought on the less academic aspects of education, for example the values endorsed by article 29.

The Committee points out that article 29:

"... emphasizes the message of child-centred education: that the key goal of education is the development of the individual child's personality, talents and abilities, in recognition of the fact that every child has unique characteristics, interests, abilities, and learning needs." (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 9)

The Committee encouraged the Philippines to

"... develop and upgrade the infrastructure of the educational system by ... developing textbooks and other school supplies, enhancing teacher training and adopting innovative and interactive learning methods tailored for children with different learning prerequisites..." (Philippines CRC/C/15/Add.259, para. 70)

And expressed concern that in the Syrian Arab Republic

"... the system of public education continues to emphasize rote learning rather than analytical skills development and is not child centred,"

recommending that the State Party taking into account the Committee's General Comment No. 1 on "The aims of education":

"... (a) Undertake a process of curriculum and teaching methodology reform – with the full participation of children – which stresses the importance of critical thinking and problem-solving-skills development;
(b) Direct education towards the development of the child's personality, talents and mental and physical abilities to their fullest potential..." (Syrian Arab Republic CRC/C/15/Add.212, para. 46)

General Comment No. 1 on "The aims of education" also points out that schools can be overly academic and competitive:

"It should be emphasized that the type of teaching that is focused primarily on accumulation of knowledge, prompting competition and leading to an excessive burden of work on children, may seriously hamper the harmonious development of the child to the fullest potential of his or her abilities and talents." (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 12)

On occasion the Committee has raised such concerns with reporting States, for example expressing concern to Japan that:

"... The excessively competitive nature of the education system has a negative effect on the children's physical and mental health and hampers the development of the child to his or her fullest potential." (Japan CRC/C/15/Add.231, para. 49)

It recommended that Thailand should:

"Enhance the quality of education in a manner that seeks to reduce the competitiveness of the education system and promotes active learning capacities and strengthen efforts to promote the development of children's personality, talents and abilities to their fullest potential, including through the promotion of cultural life, the arts, play and recreational

activities in schools... [and] ... provide sports and recreational activities as part of the curriculum..." (Thailand CRC/C/THA/CO/2, para. 63)

And to Jordan:

"The State Party should undertake a process of curriculum reform which stresses the importance of critical thinking and the development of problem-solving skills." (Jordan CRC/C/15/Add.125, para. 54)

"The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations"

The second aim of education under subparagraph (b) includes, alongside human rights and fundamental freedoms, "the principles enshrined in the Charter of the United Nations" (see box opposite).

In 1995, UNESCO endorsed a Declaration and Integrated Framework of Action on Education for Peace, Human Rights and Democracy. The Framework sets out policies, objectives and action strategies to combat discrimination, violence and xenophobia, and to develop students' self-esteem, stressing the last as "essential to social integration... The reduction of failure must be a priority." (Para. 22)

The Committee originally focused its attention on whether educational curricula include the teaching of the Convention on the Rights of the Child, given that article 42 of the Convention requires States to "make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike". Inclusion of the Convention in curricula means that knowledge of rights is a continuous process for succeeding generations of children, not just a once-only dissemination. It noted that in Slovenia the subject

"is not included at university level for future teachers"

and recommended human rights be part of the university curricula *(Slovenia CRC/C/15/Add.230, paras. 52 and 53)*.

In recent years the Committee has stressed the need for broader "human rights education", which it sees as a tool for social change. It celebrated Armenia's efforts:

"The Committee welcomes that a special curriculum for teaching human rights as the foundations of democracy and civil society has been introduced in primary education and that teachers have received training on how to teach this subject." (Armenia CRC/C/15/Add.225, para. 53)

The Committee urged the Syrian Arab Republic and Hungary to use human rights education to combat discrimination:

"The Committee recommends that the State Party... include human rights education, including children's rights, in school curricula, particularly with respect to the development of and respect for human rights, tolerance and equality of the sexes and of religious and ethnic minorities. Religious leaders must be mobilized in this regard." (Syrian Arab Republic CRC/C/15/Add.212, para. 47)

"The Committee recommends that an obligatory component of human rights education be introduced in the curriculum as it may play a central role in the endeavours to change discriminatory attitudes." (Hungary CRC/C/HUN/CO/3, para. 53)

Nor is the curriculum the only way in which values are transmitted in schools. The aim is not simply to teach children "human rights"; in terms of the content of human rights treaties, the aim is "the development of respect for human rights". There is a hidden curriculum in the messages transmitted by the way teachers and pupils behave towards each other. Children cannot be taught respect for rights unless members of the school community practise what is preached.

As the Committee puts it:

"Thus, efforts to promote the enjoyment of other rights must not be undermined, and should be reinforced, by the values imparted in the educational process. This includes not only the content of the curriculum but also the educational processes, the pedagogical methods and the environment within which education takes place, whether it be the home, school, or elsewhere. Children do not lose their human rights by virtue of passing through the school gates." (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 8)

The administrative systems, behaviour codes and teaching methods of schools should, therefore, also reflect the principles of the Convention; children's attitudes and behaviour in the school should be appraised as carefully outside the classroom as in it.

The Committee recommended that Finland:

"... examine the extent to which human rights education is available in schools and ensure that all children are not only taught human rights, but are also involved in projects where human rights standards and values are implemented in practice, whether at home, in school, or within the community." (Finland CRC/C/15/Add.272, para. 45)

Charter of the United Nations

The text of the Preamble and Chapter 1, dealing with Purposes and Principles, of the United Nations Charter reads as follows:

Preamble

WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

- to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

- to practice tolerance and live together in peace with one another as good neighbours, and
- to unite our strength to maintain international peace and security, and
- to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and
- to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

Chapter 1

PURPOSES AND PRINCIPLES

Article 1

The purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends...

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.
7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

(Charter of the United Nations, June 26, 1945)

article 29

"The development of respect for the child's parents..."

Little comment has been passed on this particular right. Allegations are sometimes made that the Convention does not support parents' rights and that it encourages children to be disrespectful of parents, so it may be useful to draw this right to the attention of those who are suspicious of the Convention.

Children should, of course, be taught to respect everyone, including other children. Throughout history, all cultures have asserted that children are disrespectful of their parents, which is perhaps why parents are accorded special mention here. It is also true that teachers can sometimes be dismissive or scornful of parents, particularly if the parents are poorly educated or come from a minority culture. Children's identity is inevitably closely bound up with their parents', and an education which is disrespectful about pupils' parents is likely to be damaging to the children's own self-esteem. The Committee has encouraged States to involve parents in school government.

One starting point is for States to encourage schools to involve parents in the school community. The Committee recommended that Japan overcome the fact that:

"... Communication and cooperation between parents and teachers with regard to children's problems and conflicts at schools is very limited." (Japan CRC/C/15/Add.231, para. 49)

"The development of respect for the child's... own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate and for civilizations different from his or her own"

Many education systems actively promote patriotism in schoolchildren, sometimes at the expense of inculcating respect for different cultures, particularly minority and indigenous cultures living within the country. Occasionally, concern is expressed in some countries that teaching respect for national values has been abandoned as old-fashioned. The importance of the wording of this subparagraph is that equal weight is given to the value systems both of the ratifying State and of other States or cultures, with a particular focus on schoolchildren who are immigrants or of a minority culture. The Committee points out that, although there is potential for conflict between values

"... in fact, part of the importance of this provision lies precisely in its recognition of the

need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference. Moreover, children are capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another." *(Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 4)*

It should be noted that the word "respect" implies more than just tolerance and understanding. It means acknowledging the equal worth of peoples of all cultures, without condescension.

The Committee expressed deep concern to Algeria about

"... the findings of the Special Rapporteur on freedom of religion or belief during his visit to Algeria in 2002 (see E/CN.4/2003/66/Add.1), in particular that teachers were said to have taught very young children how to stone an adulterous woman, that curricula were said to have conveyed a distorted notion of Algerian history and a degrading image of women, and that pupils were encouraged to spurn other religions, which were presented merely as those of colonial settlers. At the same time, concerns were expressed that children could not speak out freely in class and ask questions about Islam for fear of being labelled as troublemakers."

It recommended

"... that the State Party review school curricula with a view to instilling in pupils and students tolerance and respect for others. The Committee urges the State Party to give priority to building the capacity of teachers and to raise their awareness and responsibility in this regard. In addition, the Committee recommends that the promotion of religious tolerance and dialogue between different religions and beliefs be included in the reform of the educational system." *(Algeria CRC/C/15/Add.269, paras. 68 and 69)*

Education on values should permeate the whole of schooling, as the Committee commented to Lebanon:

"... the teaching of values is an important dimension that should be incorporated in the curricula at all levels of schooling. School curricula materials should be revised accordingly." *(Lebanon CRC/C/15/Add.54, para. 33)*

The following subparagraph sets out some of the principles underlying the teaching of values: "the spirit of understanding, peace, tolerance... and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin". Article 30 also protects the rights of minorities and indigenous peoples "to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language" (see page 455).

The Committee noted with satisfaction Saudi Arabia's efforts

"... to respond to the needs of foreign expatriate communities by allowing an establishment of foreign schools which follow the set curricula and system of schooling used in the country of origin." *(Saudi Arabia CRC/C/SAU/CO/2, para. 65)*

Other countries, for example Japan, have been encouraged to make better provision in this respect:

"The Committee recommends that the State Party... expand opportunities for children from minority groups to enjoy their own culture, profess or practise their own religion and use their own language." *(Japan CRC/C/15/Add.231, para. 50)*

"The preparation of the child for responsible life in a free society..."

This is a vital aim of education, in that it emphasizes the importance of teaching the less "academic" subjects such as health and sex education, politics, budgeting, citizenship and social relationships. Above all, students must feel that their education is not divorced from real life – a sure path to disaffection, failure and high drop-out rates (see article 28, page 426).

The Committee has raised such concerns, for example with Grenada:

"... the Committee remains concerned with the high incidence of truancy (in particular for boys), limited access to secondary education, lack of relevant learning material, insufficient numbers of trained qualified teachers, and the tendency towards the use of teaching methods that are almost exclusively examination-oriented... The Committee recommends that the State Party review its educational programme with a view to improving its quality and relevance and ensuring that students are taught an adequate mix of academic subjects and life skills, including communication, decision-making and conflict resolution skills." *(Grenada CRC/C/15/Add.121, para. 25)*

And suggested to Benin:

"... the Committee recommends that the State Party continue to allocate adequate financial, human and technical resources in order to ... design and implement a programme of activities providing alternative educational

Health education

International Conference on Population and Development: recommendations

"Youth should be actively involved in the planning, implementation and evaluation of development activities that have a direct impact on their daily lives. This is especially important with respect to information, education and communication activities and services concerning reproductive and sexual health, including the prevention of early pregnancies, sex education and the prevention of HIV/AIDS and other sexually transmitted diseases. Access to, as well as confidentiality and privacy of, these services must be ensured with the support and guidance of their parents and in line with the Convention on the Rights of the Child. In addition, there is a need for educational programmes in favour of life planning skills, healthy lifestyles and the active discouragement of substance abuse...

"To be most effective, education about population issues must begin in primary school and continue through all levels of formal and non-formal education, taking into account the rights and responsibilities of parents and the needs of children and adolescents. Where such programmes already exist, curricula should be reviewed, updated and broadened with a view to ensuring adequate coverage of such important concerns as gender sensitivity, reproductive choices and responsibilities, and sexually transmitted diseases, including HIV/AIDS..."

(International Conference on Population and Development, Cairo, 1994, A/CONF/171/13, paras. 6.15 and 11.9)

opportunities for non-enrolled children and drop-outs, include gender issues, life skills and knowledge/awareness on HIV/AIDS..." (Benin CRC/C/BEN/CO/2, para. 62)

Article 33 requires States to take educational measures to protect children from the illicit use of narcotic drugs (which includes the consumption of alcohol under the legal age limit) and article 24 requires them to ensure "all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health" and "to develop… family planning education and services".

In its General Comment No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child", States are urged to "initiate and support measures, attitudes and activities that promote healthy behaviour by including relevant topics in school curricula" (para. 17). The Committee points out:

"... It is the obligation of States Parties to ensure that all adolescent girls and boys, both in and out of school, are provided with, and not denied, accurate and appropriate information on how to protect their health and development and practise healthy behaviours. This should include information on the use and abuse, of tobacco, alcohol and other substances, safe and respectful social and sexual behaviours, diet and physical activity.

"In order to act adequately on the information, adolescents need to develop the skills necessary, including self-care skills, such as how to plan and prepare nutritionally balanced meals and proper personal hygiene habits, and skills for dealing with particular social situations such as interpersonal communication, decision-making, and coping with stress and conflict. States Parties should stimulate and support opportunities to build such skills through, inter alia, *formal and informal education and training programmes, youth organizations and the media.*

"... States Parties should provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs)... States Parties are encouraged to ensure that adolescents are actively involved in the design and dissemination of information through a variety of channels beyond the school, including youth organizations, religious, community and other groups and the media." (Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, paras. 26, 27 and 28)

The Committee was concerned about the situation in the United Kingdom whereby:

"... parents in England and Wales have the possibility of withdrawing their children from parts of the sex education programmes in schools",

commenting that this gave insufficient attention to the child's own rights to have his or her opinions given due weight under article 12 (United Kingdom CRC/C/15/Add.34, para. 14). In discussions with El Salvador, a Committee member commented: "As far as sex education was concerned, while welcoming the fact that some sex education was provided, the Committee found it regrettable that girls could not take the initiative and request the necessary information." (El Salvador CRC/C/SR.86, para. 61) When examining El Salvador's Second Report the Committee regretted the lack of sex education and recommended in particular that the Government

"... strengthen sexual and reproductive health education for adolescents, especially in school, with a view to reducing the incidence of STIs [sexually transmitted infections] and teenage pregnancies..." (El Salvador CRC/C/15/Add.232, para. 52)

Another important part of children's health education relates to HIV/AIDS. Failure by schools to provide factual information on this subject can be literally fatal to children; failure to challenge discriminatory and ill-informed social attitudes can lead to the ostracizing of children who are affected by HIV/AIDS.

The Committee's General Comment No. 3 on "HIV/AIDS and the rights of the child" also emphasizes the importance of health education:

"... children should have the right to access adequate information related to HIV/AIDS prevention and care, through formal channels (e.g. through educational opportunities and child-targeted media) as well as informal channels (e.g. those targeting street children, institutionalized children or children living in difficult circumstances). States Parties are reminded that children require relevant, appropriate and timely information which recognizes the differences in levels of understanding among them, is tailored appropriately to age level and capacity and enables them to deal positively and responsibly with their sexuality in order to protect themselves from HIV infection. The Committee wishes to emphasize that effective HIV/AIDS prevention requires States to refrain from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information, and that, consistent with their obligations to ensure the right to life, survival and development of the child (art. 6), States Parties must ensure that children have the ability to acquire the knowledge and skills to protect themselves and others as they begin to express their sexuality." (Committee on the Rights of the Child, General Comment No. 3, 2003, CRC/GC/2003/3, para. 16)

As discussed under article 12 (page 167), "responsible life in a free society..." implies the teaching of social responsibility and active participation in the processes of democracy. This is not easily taught to children if it is not practised at the same time. As a Committee member commented to representatives from China: "... the Convention's advocacy of the right of children to participate in all aspects of society and express their views demanded not just that children should be trained to act in such a way, but that adults and professionals working with children should be trained to develop participatory attitudes in children." (China CRC/C/SR.299, para. 33)

article 29

"... in the spirit of understanding... tolerance... and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin"

The Committee comments:

"Racism and related phenomena thrive where there is ignorance, unfounded fears of racial, ethnic, religious, cultural and linguistic or other forms of difference, the exploitation of prejudices, or the teaching or dissemination of distorted values. A reliable and enduring antidote to all of these failings is the provision of education which promotes an understanding and appreciation of the values reflected in article 29(1), including respect for differences, and challenges all aspects of discrimination and prejudice. Education should thus be accorded one of the highest priorities in all campaigns against the evils of racism and related phenomena. ... Racist behaviour is not something engaged in only by 'others'. It is therefore important to focus on the child's own community when teaching human and children's rights and the principle of non-discrimination. Such teaching can effectively contribute to the prevention and elimination of racism, ethnic discrimination, xenophobia and related intolerance." (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 10)

Confronted with countries scarred by civil conflicts and racial tensions, and with the rise in xenophobic and racist attitudes in some industrialized countries, the Committee has urged States Parties to take action under this provision. For example:

"The Committee would also like to suggest that measures to teach about children's and human rights could be used as a tool to advocate further the purposes of the European Youth Campaign, and the parallel Nordic

campaign to combat racism, xenophobia, anti-Semitism and intolerance. It is also the view of the Committee that it is equally important that the teaching methods used in schools should reflect the spirit and philosophy of the Convention and the aims of education laid down in its article 29." (Denmark CRC/C/15/Add.33, para. 29)

"The Committee suggests further that the curricula in all schools should include a greater focus on the personal development and vocational training of students and on inter-ethnic tolerance. The Committee recommends that the State Party seek technical assistance from UNICEF in this regard." (The former Yugoslav Republic of Macedonia CRC/C/15/Add.118, para. 45)

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, South Africa, September 2001) reflects the Committee's views in its Declaration and Programme of Action. It underlines the importance of human rights education, urging States "to introduce and, as applicable, to reinforce anti-discrimination and anti-racism components in human rights programmes in school curricula, to develop and improve relevant educational material, including history and other textbooks, and to ensure that all teachers are effectively trained and adequately motivated to shape attitudes and behavioural patterns, based on the principles of non-discrimination, mutual respect and tolerance."

The Programme of Action calls upon States "to undertake and facilitate activities aimed at educating young people in human rights and democratic citizenship and instilling values of solidarity, respect and appreciation of diversity, including respect for different groups. A special effort to inform and sensitize young people to respect democratic values and human rights should be undertaken or developed to fight against ideologies based on the fallacious theory of racial superiority." (Programme of Action, A/CONF.189/12, paras. 129 and 130)

The Final Document of the International Consultative Conference on School Education in relation to Freedom of Religion and Belief, Tolerance and Non-Discrimination (held in Madrid, Spain, in November 2001) affirmed the need for education systems simultaneously to respect religious belief (including atheism and the right not to have any religion) and to encourage tolerance and respect for other beliefs, and proposes steps that States can take to achieve this. The Vice-Chairperson of the Committee on the Rights of the Child stated in support of this Conference:

"Discrimination is learned, observed, experienced, suffered and acquired through life. Therefore, education can play an essential role not only in combating discrimination, but also in preventing it. Education is a process that takes place within the family and the community as well as in schools. If education deliberately aims to prevent and combat racisms and intolerance instead of condoning them or contributing to their development, it will make the greatest possible contribution to improving respect for human rights." (Committee on the Rights of the Child, Report on the twenty-ninth session, January/February 2002, CRC/C/114, p. 191)

Tolerance and friendship should be offered to all people, including those who are from the same cultural background but are in some way different – for example if they are homosexual or their looks do not conform to the local stereotype of beauty or they are disabled. The new Convention on the Rights of Persons with Disabilities, adopted in December 2006, calls for measures: "... to nurture receptiveness to the rights of persons with disabilities… to promote positive perceptions and greater awareness towards persons with disabilities" and for "fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities…" (Article 8)

The Committee on the Elimination of Racial Discrimination has published a number of General Recommendations which recommend that States introduce teacher training, curricula and textbooks that celebrate and respect minority cultures – see, for example, its recommendations relating to Roma (pages 416 and 417) or the following recommendation on discrimination on the basis of descent, in which it calls on States to "Review all language in textbooks which conveys stereotyped or demeaning images, references, names or opinions concerning descent-based communities and replace it by images, references, names and opinions which convey the message of the inherent dignity of all human beings and their equality of human rights." (Committee on the Elimination of Racial Discrimination, General Recommendation XXIX, 2002, HRI/GEN/1/Rev.8, p. 272)

"... in the spirit of... equality of sexes"

As discussed under article 28 (page 414), there is global concern about discrimination against girls in terms of access to schooling and high drop-out rates (see also article 2, pages 27 to 29). The causes of this phenomenon mostly relate to social and family demands on girl children, but school

life and curricula can also act as a disincentive. Once in school, it is important that the curriculum be as relevant to female life as to male life; that girls are encouraged in traditionally "male" subjects of mathematics, science, engineering and computing; that schools do not act in a sexist or discriminatory manner; and that the particular needs of girls are met.

The Committee's first General Comment on "The aims of education" concludes that:

"... gender discrimination can be reinforced by practices such as a curriculum which is inconsistent with the principles of gender equality, by arrangements which limit the benefits girls can obtain from the educational opportunities offered, and by unsafe or unfriendly environments which discourage girls' participation." *(Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 10)*

As the Platform for Action of the 1995 Beijing Fourth World Conference on Women observes: "Gender-biased educational processes, including curricula, educational materials and practices, teachers' attitudes and classroom interaction, reinforce existing gender inequalities" (para. 261). Strategic actions recommended for government include:

"Develop and adopt curricula, teaching materials and textbooks to improve the self-image, lives and work opportunities of girls, particularly in areas where women have traditionally been underrepresented, such as mathematics, science and technology ... Encourage educational institutions and the media to adopt and project balanced and non-stereotyped images of girls and boys ... Promote human rights education in educational programmes and include in human rights education the fact that the human rights of women and the girl child are an inalienable, integral and indivisible part of universal human rights ... Develop training programmes and materials for teachers and educators, raising awareness about their own role in the educational process, with a view to providing them with effective strategies for gender-sensitive teaching ... Provide education and skills training to increase girls' opportunity for employment and access to decision-making processes ... Provide education to increase girls' knowledge and skills related to the functioning of economic, financial and political systems ... Promote the full and equal participation of girls in extracurricular activities, such as sports, drama and cultural activities..." (Platform for Action, 1995, A/CONF.177/20/Rev.1, paras. 276, 277, 279 and 280)

The United Nations General Assembly's special session "Beijing plus five" in 2000 noted some progress in education for girls, but still discrimination at all levels (General Assembly, twenty-third special session, 2000, A/RES/S-23/3).

The Committee's recommendations include:

"The Committee ... recommends that the State Party...sensitize the general public and children in particular to ensure that traditional gender stereotypes do not dictate the subjects studied by male and female pupils." *(Democratic People's Republic of Korea, CRC/C/15/Add.239, para. 55)*

"... the Committee recommends that the State Party continue to allocate adequate financial, human and technical resources in order to reinforce the implementation of the Essential Learning Package to accelerate girls education and take effective measures to reduce the growing gender disparity in literacy levels, including measures aimed at altering cultural conceptions that literacy is aimed primarily at boys." *(Benin CRC/C/BEN/CO/2, para. 62)*

"The Committee recommends that the State Party, taking into account the Committee's General Comment No. 1 on 'The aims of education' (CRC/GC/2001/1), expedite the inclusion of human rights education in the curriculum of all schools, including religious and foreign schools, and ensure that children's rights, particularly with respect to tolerance and equality of religious minorities, are a core element. As regards the situation of girls in education, it recommends that the State Party take measures to break down stereotypical attitudes about the roles and responsibilities of women and men and to critically review its school curricula with a view to abolishing all discriminatory practices in education, including girls' limited access to vocational education and training." *(Saudi Arabia CRC/C/SAU/CO/2, para. 66)*

"in the spirit of... peace"

An education delivered in the spirit of peace clearly supports the principle of non-violent methods of school discipline, as discussed under articles 19 and 28 (pages 264 and 428). Education also plays a part in the objectives of articles 38 and 39, on armed conflict and rehabilitation of child victims (see pages 573 and 589). The Committee makes the point in its first General Comment on "The aims of education":

"The values embodied in article 29(1) are relevant to children living in zones of peace but they are even more important for those living in situations of conflict or emergency. As the Dakar Framework for Action notes,

it is important in the context of education systems affected by conflict, natural calamities and instability that educational programmes be conducted in ways that promote mutual understanding, peace and tolerance, and that help to prevent violence and conflict." (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 16)

The Committee has recommended conflict resolution and peace education programmes, for example, to States with recent histories of conflict such as Algeria, Sierra Leone and Croatia:

"The Committee recommends that appropriate measures be adopted with a view to preventing to the maximum possible extent the negative impact of prevailing violence, through education and information campaigns in schools on peaceful cohabitation and peaceful resolution of conflicts." (Algeria CRC/C/15/Add.76, para. 41)

"The Committee encourages the State Party in its efforts to integrate peace education, civil education and human rights into its teacher training programmes and school curricula, and recommends that the State Party continue this process, expanding it to include child rights, and ensure that every child receives such education." (Sierra Leone CRC/C/15/Add.116, para. 67)

"The Committee recommends that the State Party... in the light of article 29 on aims of education, establish adequate programmes and activities with a view to create an environment of tolerance, peace and understanding on cultural diversity to prevent intolerance, bullying and discrimination in schools and society at large." (Croatia CRC/C/15/Add.243, para. 58)

It also seeks to remedy potential conflicts, for example expressing concern about the possible provocation caused by Japanese school history textbooks:

"The Committee notes the State Party's efforts to reform the education system and bring it into greater conformity with the Convention; however, it is concerned that... despite review procedures, some history textbooks are incomplete or one-sided.
"The Committee recommends that the State Party... strengthen review procedures for textbooks to ensure that they present a balanced view." (Japan CRC/C/15/Add.231, paras. 49 and 50)

States are just beginning to wake up to their obligations to identify and prevent bullying in schools (see page 431). Often this stems from intolerant attitudes towards "difference", for example towards disabled or homosexual children or children of different cultures or religions. The Committee recommended that Lithuania, for example, tackle "the culture of violence" in its schools as a means for creating environments of tolerance, peace and understanding of cultural diversity:

"The Committee recommends that the State Party develop a comprehensive strategy addressing the culture of violence and its correlation with high levels of bullying amongst schoolchildren. The Committee also recommends that the State Party establish adequate programmes and activities with a view to creating an environment of tolerance, peace and understanding of cultural diversity shared by all children to prevent intolerance, bullying and discrimination in schools and society at large." (Lithuania CRC/C/LTU/CO/2, para. 57)

"The development of respect for the natural environment"

This provision is unique to the Convention on the Rights of the Child and reflects the growing urgency of concern about the environment. The 1992 Rio Declaration on Environment and Development (Agenda 21) stresses that all people, including children, should be made aware of the need for sustainable development and care for the natural environment. Principle 10 provides: "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level", and Principle 21: "The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all."

Agenda 21 recommendations reflect the aims of article 29: "Relevant authorities should ensure that every school is assisted in designing environmental activity work plans, with the participation of students and staff. Schools should involve schoolchildren in local and regional studies on environmental health, including safe drinking water, sanitation and food and ecosystems and in relevant activities, linking these studies with services and research in national parks, wildlife reserves, ecological heritage sites etc." (*Agenda 21*, chapter 36, para. 36.5 e))

Agenda 21 also states: "Governments, according to their strategies, should take measures to ... establish procedures allowing for consultation and possible participation of youth of both genders, by 1993, in decision-making processes with regard to the environment, involving youth

at the local, national and regional levels ... and ... establish task forces that include youth and youth non-governmental organizations to develop educational and awareness programmes specifically targeted to the youth population on critical issues pertaining to youth. These task forces should use formal and non-formal educational methods to reach a maximum audience." (*Agenda 21,* chapter 25, para 25.9 (a) and (f))

The Committee emphasizes that environmental education must not be solely theoretical:

"Education must link issues of environmental and sustainable development with socio-economic, sociocultural and demographic issues. Similarly, respect for the natural environment should be learnt by children at home, in school and within the community, encompass both national and international problems, and actively involve children in local, regional or global environmental projects."
(Committee on the Rights of the Child, General Comment No, 1, 2001, CRC/GC/2001/1, para. 13)

Freedom to establish schools outside the state system that conform to the aims of education under the Convention and any minimum standards laid down by the State

This right repeats, more or less word for word, article 13(4) of the International Covenant on Economic, Social and Cultural Rights. Despite the Committee's concern about the discriminatory impact private education may have on state education and on poor families (see article 28, page 407), the right to opt out of state education is an important one, not only to protect individual freedoms, but also, particularly because there is no blueprint for "good education", and education systems should allow for diversity and flexibility.

The two conditions in article 29(2) are essential fetters on this freedom – that private education should conform to the aims of education as set out in article 29(1) and that it should conform to any minimum mandatory standards. They prevent, for example, the existence of religious schooling focusing only on doctrinal texts, or schools that fail to equip children for "responsible life" by not teaching them basic skills. The Committee on Economic, Social and Cultural Rights comments: "Given the principles of non-discrimination, equal opportunity and effective participation in society for all, the State has an obligation to ensure that the liberty… does not lead to extreme disparities of educational opportunity for some groups in society." (Committee on Economic, Social and Cultural Rights, General Comment No. 13, 1999, HRI/GEN/1/Rev.8, para. 30, p. 77)

The paragraph is formulated as a right of individuals rather than as an obligation of the State Party. The State Party is not required, under this article, to lay down "minimum standards". However, article 3(3) provides: "States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform to standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision." In addition to States having to ensure that private schools meet the health and staffing standards mentioned in article 3(3), they must also ensure these schools' curricula and teaching methods fulfil the aims set out in article 29.

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

article 29

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 29, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 29 is relevant to the **departments of education, health and the environment**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 29 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 29 likely to include the training of **teachers, education administrators, vocational guidance personnel**)?

• Specific issues in implementing article 29

- ☐ Have the aims of education been reviewed in the light of the Committee's General Comment (2001)?

Do all forms of education provided for children within the country aim to

- ☐ develop their personalities to their fullest potential?
- ☐ develop their talents to their fullest potential?
- ☐ develop their mental abilities to their fullest potential?
- ☐ develop their physical abilities to their fullest potential?

- ☐ Is the Convention on the Rights of the Child incorporated in school curricula?
- ☐ Are children taught about other human rights principles?
- ☐ Do administrative systems in schools conform to the principles of the Convention?
- ☐ Do teaching methods conform to the principles of the Convention?

How to use the checklist, *see page XIX*

Do education institutions, materials and services and educational curricula develop children's respect for

- ☐ their parents?
- ☐ their own cultural or national identity, language and values?
- ☐ the national values of the ratifying country?
- ☐ the national values of the country from which they originated?
- ☐ the national values of other civilizations?

☐ Do all forms of education aim to prepare children for responsible life in a free society?

☐ Do schools practise democratic procedures?

☐ Are children given responsibilities and opportunities to practise choice, decision-making and independence?

Are children educated about

- ☐ health promotion?
- ☐ sexuality and reproductive health?
- ☐ social relationships, including mediation and negotiation skills and non-violent conflict resolution?
- ☐ money management and budgeting?
- ☐ the law?
- ☐ responsibilities of community life and citizenship?

☐ Does education encourage understanding, tolerance and friendship among all people?

Are measures taken to combat sex discrimination in

- ☐ the curriculum?
- ☐ educational materials?
- ☐ teaching attitudes?
- ☐ school ethos?

☐ Are the children taught non-violent values in the spirit of peace?

☐ Do educational institutions prevent all expressions of violence, whether by pupils or teachers?

☐ Are measures adopted to combat bullying?

☐ Do all forms of education include strategies to develop children's respect for the natural environment?

☐ Are private schools permitted?

Do minimum standards require that private schools

- ☐ do not discriminate?
- ☐ develop their pupils' abilities to their fullest potential?
- ☐ teach and practise the values laid out in article 29(1)?
- ☐ respect the rights of the child under the Convention?
- ☐ have sufficient and appropriately skilled staff and comply with health and safety requirements?

☐ Are measures, such as inspection and regulation procedures, adopted to ensure that the education in all private schools conforms to these standards?

How to use the checklist, *see page XIX*

article 29

Reminder: **The Convention is indivisible and its articles interdependent. Article 29 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 29 include:

Article 13: freedom of expression
Article 14: freedom of thought, conscience and religion
Article 15: freedom of association
Article 16: protection of privacy
Article 17: access to information and role of media
Article 24: health (including health education)
Article 28: right to education
Article 30: children of minorities or of indigenous peoples
Article 31: rest, leisure, play, recreation and culture
Article 33: protection from drug abuse
Article 38: children and armed conflict

Children of minorities or of indigenous peoples

Text of Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 30 protects the rights of children from minority or indigenous groups to enjoy their culture, practise their religion and use their language together with other members of their group.

It might be asked: Why is article 30 necessary? Articles 7 and 9 prevent unreasonable separation from parents; article 8 secures the right of the child "to preserve his or her identity"; article 14 safeguards children's freedom of religion with direct reference to their parents' role in this respect; article 16 prevents arbitrary or unlawful interference with the child's family; article 17 requires States to encourage the mass media to have particular regard to the linguistic needs of children from minority or indigenous groups; article 20 ensures that where the child is deprived of his or her family environment "due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background"; article 21 reaffirms this in respect of intercountry adoption; article 29 includes respect for the child's own culture, language and values in the aims of education and upholds the child's right to be educated outside the state system; and article 40 requires the use of interpreters if the child cannot understand the language used in the administration of juvenile justice. In addition articles 10 and 22 require special measures regarding immigrant and refugee children. Overarching all, is article 2, securing all the rights of the Convention without discrimination of any kind "irrespective of the child's or his or her parent's or legal guardian's race, colour,... language, religion, ... national, ethnic or social origin ... or other status".

In the light of this, the provisions of article 30 might seem redundant. However, the overwhelming evidence of serious and continuing discrimination against minority and indigenous populations justifies mention of their rights in a separate article, to make certain that States pay adequate attention to them. Additionally, cultural rights of minorities may include rights not addressed in the Convention, such as a relationship with territory.

The Convention lays proper stress on the right of children to be protected from the harmful prac-

Summary

tices of their parents, families and communities. It is equally important for the Convention to stress the right of peaceful enjoyment of practices and faiths that are not harmful, no matter how strange or alien they may seem to others. Article 30 affirms the rich diversities of cultures that are practised within a framework of human rights. ■

Background

Article 27 of the International Covenant on Civil and Political Rights states: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

Article 30 of the Convention on the Rights of the Child thus repeats, with special reference to children, more or less word for word, the Covenant on Civil and Political Rights save for the addition of "persons of indigenous origin". Article 30 emanated from a proposal by a non-governmental organization called the Four Directions Council, supported by Mexico, to dedicate an article of the Convention to the rights of indigenous children. The drafting Working Group quickly agreed that this should embrace the rights of all minority children and concluded that it would not be helpful to introduce wording which departed from that of the International Covenant on Civil and Political Rights (E/CN.4/1986/39, p. 13; Detrick, p. 408).

The *Manual on Human Rights Reporting,* 1997, also points out that "by replacing the plural used in the Covenant '**persons** belonging to such minorities' by a reference to the **child**, it has emphasized the individual nature of the rights recognized in this article, even if they are to be enjoyed 'in community with other members' of the child's group". (*Manual*, p. 489)

These are clearly improvements that do not detract from the originating principles of the Covenant. In addition, it should perhaps be noted that in some countries majority populations have been denied rights (for example in South Africa during apartheid) and that there are some minority groups which cannot claim to be "ethnic, religious or linguistic" (for example some "traveller" communities in Europe) but whose rights to enjoy their culture have been unreasonably denied.

General Comment No. 23 by the Human Rights Committee, on article 27 of the International Covenant on Civil and Political Rights, makes the following points:

- the right to enjoy culture is not a collective right of self-determination and does not prejudice the sovereignty and territorial integrity of a State Party. At the same time, the right may consist of "a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority", including "such traditional activities as fishing or hunting or the right to live in reserves";
- international or domestic obligations not to discriminate, and to treat everyone equally, do not mean that minorities cannot be recognized;
- the right applies to everyone within the territory, not just citizens or people with permanent residence;
- the right to use a minority language is to be distinguished from freedom of expression and the right of accused people to an interpreter: it upholds the rights of minorities to use that language amongst themselves;
- the formulation of the right in negative terms "not to be denied the right..." nevertheless does recognize the existence of a right. This obliges the State Party to take positive measures both in terms of its own actions and against the acts of other persons in the country, in order to protect the minority group's cultural identity, language or religion;
- such positive measures must not thereby discriminate against any other group or individual or breach any other article of the Covenant;
- the aim is to ensure the survival and continual development of minorities "thus enriching the fabric of society as a whole".

(Human Rights Committee, General Comment No. 23, 1994, HRI/GEN/1/Rev.8, pp. 198 to 200)

The negative formulation of the phrase "shall not be denied the right ..." in article 27 of the Covenant (repeated in article 30 of the Convention on the Rights of the Child) was not repeated in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the General Assembly in 1992. In this text the rights of persons belonging to minorities are stated in positive rather than negative terms (for example, "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories...") and the obligation of States to implement these rights is also

clearly stated ("... and shall encourage conditions for the promotion of that identity... States shall adopt appropriate legislative and other measures to achieve those ends") (article 1).

In 1991 the International Labour Organization adopted ILO Convention (No.169) concerning Indigenous and Tribal Peoples in Independent Countries, with a view to "removing the assimilationist orientation of earlier standards" and calling for special measures to protect the culture and rights of such people, and encouraging the use of their customs "to the extent compatible with the national legal system and internationally recognized human rights" (preamble and article 9). The Committee on the Elimination of Racial Discrimination has, in addition, adopted a General Recommendation on the rights of indigenous peoples, calling on States Parties to "recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation", especially in terms of recognizing their rights to land and to provide them with "conditions allowing for a sustainable economic and social development compatible with their cultural characteristics". (Committee on the Elimination of Racial Discrimination, General Recommendation XXIII, 1997, HRI/GEN/1/Rev.8, para. 4, p. 256)

In 2002, the United Nations Permanent Forum of Indigenous Peoples, an advisory body to the Economic and Social Council, held its first meeting. In 2006 the Human Rights Council adopted the Declaration on the Rights of Indigenous Peoples, in recognition of the particular vulnerability of indigenous populations (Report to the General Assembly on the first session of the Human Rights Council, A/HRC/1/L.10, 30 June 2006, p. 63). The Declaration asserts the right of indigenous people to autonomous life within the dominant culture without prejudicing their equal right to participate in the political, social and economic life of the country. As regards culture, article 31(1) of the Declaration provides:

"Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions."

Because countries distinguish between the rights of citizens and those residing in the country, the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990 is also important. This Convention protects the rights of migrant workers to manifest their religion (article 12); States Parties "shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin" (article 31) and secure policies for teaching children both the local languages and their mother tongue (article 45).

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, South Africa, September 2001) in its Declaration reiterates the text of article 30 (Declaration, para. 73). The Programme of Action urges States "to adopt, where applicable, appropriate measures to ensure that persons belonging to national or ethnic, religious and linguistic minorities have access to education without discrimination of any kind and, where possible, have an opportunity to learn their own language in order to protect them from any form of racism, racial discrimination, xenophobia and related intolerance that they may be subjected to." (Programme of Action, A/CONF.189/12, para. 124. The Programme of Action also contains detailed recommendations relating to indigenous peoples.)

The outcome document of the United Nations General Assembly's special session on children called on States to:

"Ensure that indigenous children and children belonging to minorities have access to quality education on the same basis as other children. Efforts must be directed to providing this education in a manner that respects their heritage. Efforts must also be directed at providing educational opportunities so that indigenous children and children belonging to minorities can develop an understanding of, and sustain their cultural identity, including significant aspects such as language and values." (Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, p. 17)

Minority cultures and human rights

In its first General Comment on "The aims of education" (article 29), the Committee on the Rights of the Child points out that the requirement of article 29 to teach respect both for the child's own culture and for other cultures is deliberate:

"... in fact, part of the importance of this provision lies precisely in its recognition of the need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference. Moreover, children are capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another." *(Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 4)*

However, the right of any group to practise their culture and religion is not unlimited. Both majority and minority cultures must be practised within the framework of human rights, and no religion is exempt from these constraints. The Committee points this out in its General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment":

"Some raise faith-based justifications for corporal punishment, suggesting that certain interpretations of religious texts not only justify its use, but provide a duty to use it. Freedom of religious belief is upheld for everyone in the International Covenant on Civil and Political Rights (art. 18), but practice of a religion or belief must be consistent with respect for others' human dignity and physical integrity. Freedom to practise one's religion or belief may be legitimately limited in order to protect the fundamental rights and freedoms of others. In certain States, the Committee has found that children, in some cases from a very young age, in other cases from the time that they are judged to have reached puberty, may be sentenced to punishments of extreme violence, including stoning and amputation, prescribed under certain interpretations of religious law. Such punishments plainly violate the Convention and other international human rights standards, as has been highlighted also by the Human Rights Committee and the Committee against Torture, and must be prohibited." *(Committee on the Rights of the Child, General Comment No. 8, 2006, CRC/C/GC/8, para. 29)*

The Committee therefore occasionally points out to States their obligation to ensure that human rights are respected by minority cultures, as well as tackling the oppression and discrimination they experience:

"The Committee recommends that the State Party strengthen its efforts to improve the equal enjoyment of all rights of children belonging to minorities and indigenous peoples, in particular, by prioritizing effective measures to reduce poverty among them. The Committee also recommends that the State Party take measures to promote respect for the views of children, especially girls, belonging to minorities and indigenous peoples and facilitate their participation in all matters affecting them." *(Belize CRC/C/15/Add.252, para. 73)*

"As regards the child's right to use his/her own language, the Committee encourages the State Party to continue its efforts to address the linguistic needs of indigenous and minority children. In addition, the Committee recommends that the State Party seek, in close collaboration with indigenous and minority communities and their respective leaders, effective measures to abolish traditional practices prejudicial to the health and well-being of indigenous and minority children, such as early marriage." *(Philippines CRC/C/15/Add.259, para. 94)*

Reservations

Turkey and France have entered reservations in respect of article 30.

Turkey states: "The Republic of Turkey reserves the right to interpret and to apply the provisions of [articles] 17, 29 and 30 of the Convention on the Rights of the Child according to the letter and spirit of the Constitution of the Republic of Turkey and of the Treaty of Lausanne of 24 July 1923." (CRC/C/2/Rev.8, p. 41)

The Committee noted that this reservation

"... may have a negative impact on children belonging to ethnic groups which are not recognized as minorities under the Treaty of Lausanne of 1923, in particular children of Kurdish origin"

and encouraged its withdrawal *(Turkey CRC/C/15/Add.152, para. 11).*

France states: "The Government of the Republic declares that, in the light of article 2 of the Constitution of the French Republic, article 30 is not applicable in so far as the Republic is concerned." (CRC/C/2/Rev.8, p. 21) France's explanation of this in its Initial Report does not take the matter much further: "France entered one reservation and two interpretative declarations. The reservation concerns article 30. Having regard to article 2 of the Constitution of the French Republic ('France is a Republic, indivisible, secular, democratic and social. It shall ensure the equality of all citizens before the law without distinction of origin, race or religion. It shall respect all beliefs...'), France considers that article 13 (article 30 of the Convention) is not applicable in so far as the Republic is concerned. Indeed, on the basis of these principles of equality and non-discrimination, the existence of minorities cannot be recognized in France in the sense of groups enjoying a special status. France made a similar reservation

in respect of article 27 of the International Covenant on Civil and Political Rights." (France CRC/C/3/Add.15, paras. 46 to 48)

When examining France's Initial Report the Committee noted the reservation

"... with concern. The Committee wishes to emphasize that the Convention on the Rights of the Child seeks to protect and guarantee the individual rights of children, including the rights of children belonging to minorities." (France CRC/C/15/Add.20, para. 11)

And when examining France's Second Report the Committee urged France to withdraw the reservation and observed:

"The Committee welcomes information provided in the State Party's report that all children in France are equal before the law and have a right to freedom of religion, expression in their own language in private affairs and right to cultural activities. However, the Committee remains concerned that equality before the law may not be sufficient to ensure equal enjoyment of rights by certain minority groups, such as the Roma, among others, who may face de facto discrimination. The Committee regrets that the State Party has not considered reviewing its position and withdrawing its reservation to article 30 of the Convention.

"The Committee encourages the State Party to continue measures to prevent and combat racism, xenophobia, discrimination and intolerance, by, inter alia, *ensuring follow-up to the recommendations of the United Nations treaty bodies and the European Commission against Racism and Intolerance (ECRI), in particular as concerns children." (France CRC/C/15/Add.240, paras. 60 and 61)*

France's explanation is difficult to understand since article 30 does not accord minority groups "special status"; it simply protects their civil rights, as does the French Constitution. The General Comment by the Human Rights Committee on article 27 of the Covenant addresses the French position: "The Covenant also distinguishes the rights protected under article 27 from the guarantees under articles 2(1) and 26. The entitlement, under article 2.1, to enjoy the rights under the Covenant without discrimination applies to all individuals within the territory or under the jurisdiction of the State whether or not those persons belong to a minority. In addition, there is a distinct right provided under article 26 for equality before the law, equal protection of the law, and non-discrimination in respect of rights granted and obligations imposed by the States. It governs the exercise of all rights, whether protected under the Covenant or not, which the State Party confers by law on individuals within its territory or under its jurisdiction, irrespective of whether they belong to the minorities specified in article 27 or not. Some States Parties who claim that they do not discriminate on grounds of ethnicity, language or religion, wrongly contend, on that basis alone, that they have no minorities." (Human Rights Committee, General Comment No. 23, 1994, HRI/GEN/1/Rev.8, para. 4, p. 198)

In addition, two other countries, Canada and Venezuela, have made declarations relevant to article 30 of the Convention on the Rights of the Child.

Canada's "Statement of understanding" provides: "It is the understanding of the Government of Canada that, in matters relating to aboriginal peoples of Canada, the fulfilment of its responsibilities under article 4 of the Convention must take into account the provisions of article 30. In particular, in assessing what measures are appropriate to implement the rights recognized in the Convention for aboriginal children, due regard must be paid to not denying their right, in community with other members of their group, to enjoy their own culture, to profess and practise their religion and to use their own language." (CRC/C/2/Rev.8, p. 16) If this declaration means that Canada might give article 30 a superior status to other rights under the Convention, this would be contrary to the "indivisibility" of these rights; but if it is simply, as it were, a reminder to the Canadian Government to pay particular attention to the provisions of article 30, then the declaration is not in conflict with the principles of the Convention. Canada also entered a specific reservation to article 21 in relation to article 30, in so far as it allows aboriginal practices in adoption which might not be compatible with article 21, which the Committee "noted with concern" (Canada CRC/C/15/Add.37, para. 10). When Canada submitted its Second Report, the Committee regretted that Canada had no intention of withdrawing this reservation and invited it to "continue its dialogue with the Aboriginals with a view to the withdrawal of the reservation" (Canada CRC/C/15/Add.215, paras. 6 and 7).

Venezuela states: "The Government of Venezuela takes the position that article 30 must be interpreted as a case in which article 2 of the Convention applies." (CRC/C/2/Rev.8, p. 44) The Committee did not comment on this declaration when responding to Venezuela's Initial Report, but the General Comment by the Human Rights Committee, quoted in regard to France's reservation, is relevant.

"a child belonging to... a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her culture"

Article 30 is not about the fact that a great many minority and indigenous groups suffer from discrimination in terms of education, health and employment opportunities and from social prejudice or outright harassment. It is about cultural, religious and linguistic rights rather than economic or political rights. Nonetheless, the entitlement "not to be denied the right ... to enjoy [their] own culture" is often disturbed by social, economic or political forms of persecution. For example:

"The Committee notes with concern that, despite constitutional recognition of indigenous customary rights, indigenous communities still suffer from institutional neglect, historic abandonment and indiscriminate pillaging of natural resources, especially in the Caribbean region." (Nicaragua CRC/C/15/Add.265, para. 75)

"The Committee welcomes the legal steps taken to recognize ethnic diversity, autonomy and collective land rights of minorities, in particular the Afro-Colombian and indigenous peoples. However, it notes that in practice the above groups confront serious challenges and threats to the enjoyment of their rights. Both the regular armed forces and the armed groups distinct from the State armed forces block vital supplies of food and medicines, resulting in high levels of malnutrition and disease. In particular, the Committee is concerned over the threats against indigenous leaders, the over-representation of ethnic minority children among those displaced, victims of landmines and those forcefully recruited by illegal armed groups. The Committee is also concerned that among children of ethnic minorities, birth registration rates are low and access to basic health services is lacking. Despite an established programme for bilingual education (etnoeducación) *the coverage is limited and illiteracy rates high. The Committee is concerned that, despite affirmative legal provision, children of ethnic minorities are victims of social exclusion and racial discrimination. Additionally, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people highlighted in his 2004 mission report on Colombia (E/CN.4/2005/88/Add.2) that several indigenous peoples in Amazonia are facing extinction."* (Colombia CRC/C/COL/CO/3, para. 94)

"The Committee notes the absence of information on ethnic minorities in the State Party's report and is concerned over the situation of children belonging to minorities, in particular Oromo and Anuak, as they suffer stigmatization and persecution by the armed forces, including torture, rape and killings, due to the presence of opposition groups within their territories." (Ethiopia CRC/C/ETH/CO/3, para. 79)

Indigenous children. Across the world aboriginal or indigenous peoples, particularly, have been reduced to pitiful states as the incoming culture has dominated, corrupted and exploited these groups' culture and traditional activities. As the Human Rights Committee points out, cultural rights are often bound up with survival rights of territory, fishing and hunting. Special measures may have to be taken by the State Party to ensure that health and education services are supplied without interfering with cultural practices.

In 2003 the United Nations Permanent Forum on Indigenous Issues (UNPFII), an advisory body to the Economic and Social Council, made indigenous children and youth the focus of its second meeting. This called for new indicators to be developed by the United Nations to target the extreme problems faced by indigenous children across the world and for many of the United Nations agencies to pursue the very high levels of discrimination and exploitation these children suffer (Economic and Social Council, Permanent Forum on Indigenous Issues, second session, "Indigenous children and youth", 2003, E/C.19/2003/L.1/Rev.1, May 2003). The Forum also welcomed the fact that indigenous children was the theme of a Day of General Discussion by the Committee on the Rights of the Child in the same year.

In the Day of General Discussion on "The rights of indigenous children", the Committee noted:

"... although indigenous children are disproportionately affected by specific challenges such as institutionalization, urbanization, drug and alcohol abuse, trafficking, armed conflict, sexual exploitation and child labour... [they] are not sufficiently taken into consideration in the development and implementation of policies and programmes for children." (Committee on the Rights of the Child, Report on the thirty-fourth session, September/October 2003, CRC/C/133, preamble, p. 133)

It called on States to sharpen their focus on these children and reminded them of their duties in relation to culture, for example to allow indigenous parents *"to give their child a name of their own choosing"* (para. 15). Among its recommen-

dations were those relating to education. States were asked to:

"... (a) review and revise school curricula and textbooks to develop respect among all children for indigenous cultural identity, history, language and values in accordance with the Committee's General Comment No. 1 on 'The aims of education';
(b) implement indigenous children's right to be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong, as well as in the national language(s) of the country in which they live;
(c) undertake measures to effectively address the comparatively higher drop-out rates among indigenous youth and ensure that indigenous children are adequately prepared for higher education, vocational training and their further economic, social and cultural aspirations;
(d) take effective measures to increase the number of teachers from indigenous communities or who speak indigenous languages, provide them with appropriate training, and ensure that they are not discriminated against in relation to other teachers;
(e) allocate sufficient financial, material and human resources to implement these programmes and policies effectively."
(Committee on the Rights of the Child, Report on the thirty-fourth session, September/October 2003, CRC/C/133, para. 19, p. 136)

One of the difficulties facing indigenous populations, even today, is that the State, representing the dominant majority, sometimes believes that full integration is in their best interests, regardless of the effect this may have on their culture. Forced integration is a breach of rights and the Committee has recommended that States with significant indigenous populations adopt enforceable legislation to protect their rights. The Committee raised this concern with Brazil:

"The Committee welcomes the fact that social organization, customs, languages, creeds and traditions are recognized to indigenous communities in the Constitution of 1988. However, as noted by the State Party, the Indian Statute promotes for an integration which is not in accordance with the principle of respect for diversity of cultures. The Committee also welcomes the fact that, according to law 10.406/02, indigenous people are no longer considered 'relatively incapable citizens'. It also welcomes the efforts made by the State Party to stimulate bilingual education. However, the Committee is deeply concerned by the low standard of living of indigenous children, low educational opportunities and quality of health services, and malnutrition.

"The Committee urges the State Party to pursue measures to effectively address the gap in life opportunities of indigenous children. Training and awareness-raising activities should be provided to break social prejudice, in order to revert the historical logic of colonization, which jeopardizes any chance of attaining genuinely equal treatment.
"The Committee also recommends that the State Party take adequate measures in order to provide protection for the rights of indigenous children, in particular their rights to preserve historical and cultural identity, customs, traditions and languages in accordance with the Constitution, and taking into account the recommendations adopted by the Committee on its day of general discussion on the rights of indigenous children in September 2003." *(Brazil CRC/C/15/Add.241, paras. 71 to 73)*

The Committee suggested enforceable legislation to protect the rights of indigenous children to Mexico (where there are 56 officially recorded indigenous groups):

"Principles relating to ... the prohibition of discrimination in relation to children should be incorporated into domestic law, and it should be possible to invoke them before the courts." *(Mexico CRC/C/15/Add.13, para. 15)*

In responding to Mexico's Second Report, the Committee acknowledged that some progress had been made on behalf of indigenous children but reiterated that more effective measures must be taken (Mexico CRC/C/15/Add.112, paras. 18 and 29). When Mexico submitted its Third Report, the Committee again noted some progress but expressed its "deep concern" at these children's continuing plight, recommending:

"... that the State Party take all necessary measures to protect the rights of indigenous children against discrimination and to guarantee their enjoyment of the rights enshrined in domestic law and in the Convention. The Committee further recommends that the State Party provide indigenous communities, with sufficient information, in their own language as well as in a child friendly format, regarding birth registration procedures, child labour, education and health, HIV/AIDS, child abuse and neglect, including corporal punishment, and on themes covered by the Optional Protocols to the Convention. In this regard, the Committee refers the State Party to its recommendations adopted following its day of general discussion on the rights of indigenous children at its thirty-fourth session in 2003 and to the recommendations issued by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, contained in his report E/CN.4/2004/80/Add.2." *(Mexico CRC/C/MEX/CO/3, para. 73)*

Roma children. While not every country has an indigenous population, most countries these days have minority population of some sort. For example, in almost every European country the circumstances of Roma children have aroused the Committee's concern, particularly with regard to inadequate and discriminatory education:

"The Committee is concerned that there exists extensive discrimination regarding access to education by ethnic and/or national minorities, especially Roma (only 33 per cent of whom attend primary school)...
"While the Committee welcomes the Law on the Protection of National Minorities, adopted by Parliament of Bosnia and Herzegovina on 1 April 2003, as well as the establishment of the Roma Committee, it remains concerned about the fact that continuing problems of ethnic discrimination and intolerance, including instances of violence and of daily discrimination, have a huge impact on the full enjoyment of the rights enshrined in the Convention by children belonging to ethnic minorities, especially Roma." (Bosnia and Herzegovina CRC/C/15/Add.260, paras. 57 and 75)

"The Committee notes with concern that most Roma children attend special schools because of real or perceived language and cultural differences between the Roma and the majority; that the School Act does not offer instruction in the Roma language; and the negative, stereotypical description of the Roma and their children in general, but especially in the initial report." (Slovakia CRC/C/15/Add.140, para. 47)

The Committee on the Elimination of Racial Discrimination's General Recommendation on racial discrimination against Roma emphasizes the need for changes to States' education policies (see page 416), and for States to respect Roma communities' wishes as to their culture and lifestyle, rather than trying to make them conform to the prevailing culture. It encourages initiatives to give Roma access to the media and to participate in public life. (Committee on the Elimination of Racial Discrimination, General Recommendation XXVII, 2000, HRI/GEN/1/Rev.8, pp. 259 *et seq.*)

Children in armed conflict. In its Day of General Discussion on "Children in armed conflict", the Committee on the Rights of the Child stressed "*the need to preserve the children's cultural environment*" (Report on the second session, September/October 1992, CRC/C/10, p. 23). Doing so may be difficult if, for example, a State is receiving refugee children from a different culture to its own. However, children suffering the trauma of war and displacement particularly need the reassurance of familiar cultural practices. Securing their rights under article 30 is therefore of paramount importance.

State initiatives

The Committee encourages States to take active measures, including comprehensive strategies, to tackle negative attitudes towards minority cultures and to secure their rights under article 30. For example:

"In accordance with articles 2 and 30 of the Convention, the Committee recommends that the State Party:
(a) Initiate campaigns, at all levels and in all regions, aimed at addressing the negative attitudes towards the Roma in society at large, in particular among authorities such as the police and professionals providing health care, education and other social services;
(b) Based on the evaluation of previous strategies, develop and implement a comprehensive strategy for improving access to primary health care, education and social welfare services, in cooperation with Roma NGO partners, and targeting the whole Roma child population;
(c) Develop curriculum resources for all schools, including in relation to Roma history and culture, in order to promote understanding, tolerance and respect for Roma in Romanian society." (Romania CRC/C/15/Add.199, para. 65)

"The Committee recommends that the State Party take effective measures to protect the full enjoyment of the rights of children belonging to ethnic minority groups and undertake special measures to stimulate a process of reconciliation and confidence building, including wide-ranging educative and awareness-raising campaigns." (Bosnia and Herzegovina CRC/C/15/Add.260, para.76)

"The Committee recommends that the State Party... amend the draft Law on the Promotion and Protection of the Rights of Indigenous Populations in the Republic of the Congo, so as to ensure that it explicitly covers all areas of the Convention on the Rights of the Child..." (Republic of the Congo CRC/C/COG/CO/1, para. 89)

The Committee has also welcomed state initiatives in recent years, for example those developed to redress past injustices to minority groups:

"The Committee welcomes the Statement of Reconciliation made by the Federal Government expressing Canada's profound regret for historic injustices committed against Aboriginal people, in particular within the residential school system. It also notes the priority accorded by the Government to improving the lives of Aboriginal people across Canada and by the numerous initiatives,

provided for in the federal budget, that have been embarked upon since the consideration of the initial report…" (Canada CRC/C/15/Add.215, para. 58)

"The Committee notes the national inquiry carried out in 1997 by HREOC [Human Rights and Equal Opportunities Commission] into the separation of Aboriginal and Torres Strait Island children ('Bringing Them Home'), which acknowledged the past policies whereby indigenous persons were deprived of their identity, name, culture, language and family. In this respect, the Committee welcomes the activities undertaken by the State Party to assist family reunification and improve access to records to help indigenous persons trace their families.
"The Committee encourages the State Party to continue and strengthen as much as possible its activities for the full implementation of the recommendations of the 1997 HREOC report, 'Bringing Them Home', and to ensure full respect for the rights of Aboriginal and Torres Strait Islander children to their identity, name, culture, language and family relationships." (Australia CRC/C/15/Add.268, paras. 31 and 32)

"The Committee welcomes various measures undertaken by the State Party, including the Working Group on Improved Integration and the campaign 'All young people are needed', which aim to ensure that all young people, irrespective of their ethnic background, enjoy equal opportunities in the Danish education system." (Denmark CRC/C/DNK/CO/3, para. 48)

"… to profess and practise his or her own religion"

Many minority groups are able to practise their religion without interference, but this is not always the case. This topic is also addressed under article 14 – the child's right to freedom of thought, conscience and religion (article 14, see page 185). Article 30 focuses on the violation of the rights of whole communities, of which the child is one member. In recognition of these violations the United Nations Commission on Human Rights appointed a Rapporteur to combat religious intolerance. The Special Rapporteur on freedom of religion or belief visits countries, sends communiques to States on urgent violations and reports annually to the Commission. Her 2006 report carried an in-depth analysis on various State prohibitions on the wearing of religious dress and symbols (E/CN.4/2006/5).

Article 11(1) of the Declaration on the Rights of Indigenous Peoples states: "Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature." (Report to the General Assembly on the first session of the Human Rights Council, A/HRC/1/L.10, 30 June 2006, p. 63) The Committee on the Rights of the Child pursues violations of minorities' religious freedom, for example in the case of China where such interference has caused the Committee deep concern:

"In the framework of the exercise of the right to freedom of religion by children belonging to minorities, in the light of article 30 of the Convention, the Committee expresses its deep concern in connection with violations of human rights of the Tibetan religious minority. State intervention in religious principles and procedures seems to be most unfortunate for the whole generation of boys and girls among the Tibetan population…
"The Committee recommends that the State Party seek a constructive response to [these] concerns…" (China CRC/C/15/Add.56, paras. 20 and 41)

When China submitted its Second Report, the Committee reiterated its concern:

"While noting the adoption of the Regional Ethnic Autonomy Act in 2001, which guarantees freedom of religion for ethnic minorities in mainland China, the Committee is concerned about reports that children, in particular Tibetan Buddhist, Uighur and Hui children, have been restricted in studying and practising their religion, and in some cases have been detained for participating in religious activities. It is also concerned at reports that children of families practising their religion, notably the Falun Gong, are subject to harassment, threats and other negative actions, including re-education through labour…" (China CRC/C/CHN/CO/2, para. 44)

China was asked to explicitly guarantee children freedom of religion "not tied to a limited number of recognized faiths" and to repeal all existing bans on religious practices (CRC/C/CHN/CO/2, para. 45).

In the case of Indonesia, which "officially recognizes" five religions (Islamic, Catholic, Christian, Hindu and Buddhist), the Committee expressed its concern that

"… limiting official recognition to certain religions may give rise to practices of discrimination". (Indonesia CRC/C/15/Add.25, para. 13)

When examining Indonesia's Second Report the Committee welcomed:

"... the adoption of the 1999 Human Rights Act, which recognizes the right to freedom of religion and worship of everyone. However, the Committee is still concerned that the rights of children belonging to a minority or ethnic group are not recognized by the 1999 Human Rights Act..." (Indonesia CRC/C/15/Add.223, para. 90)

The Committee follows up findings of the Special Rapporteur on freedom of religion or belief, for example in relation to Algeria (see page 445).

"... to use his or her own language"

This right is about being able to speak a minority language without interference. Children's right to "use" their own language does not necessarily entitle them to be taught entirely in that language, though initially this may be necessary for refugee or immigrant children; the right may also involve positive measures to ensure that children are taught to speak their mother tongue in schools.

UNICEF reports that schooling in children's mother tongue "is the norm in most high-achieving countries. Contrast this with the situation in most Lusophone and Francophone African countries where instruction in the earliest grades is not in the mother tongue: these are the very countries with the lowest enrolment rates in the world" (S. Mehrotra, J. Vandemoortele, E. Delamonica, *Basic services for all?,* UNICEF, Innocenti Research Centre, 2000, p. 27). Equally, measures may be needed to ensure that children who speak a minority language are not impeded by ignor ance of the majority language.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families spells out such distinctions, in article 45:

"(2) States of employment shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.

(3) States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate wherever appropriate.

(4) States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin."

Thus, under this Convention, the State must take measures to integrate the children by teaching them the local language and must (if necessary) teach them their own language. In addition, it *may* teach them *in* their own language.

Article 28 of ILO Convention (No.169), however, provides that: "Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to adopting measures to achieve this objective", as well as adopting measures to ensure fluency in the national language. This accords with article 14 of the Declaration on the Rights of Indigenous Peoples, which provides that States should take "effective measures" to ensure that children have access to education in their own language:

"1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language." (Report to the General Assembly on the first session of the Human Rights Council, 30 June 2006, A/HRC/1/L.10, p. 64)

The Committee on the Rights of the Child has suggested that States teach in minority languages:

"In the light of article 30, the Committee is concerned at the lack of measures taken to provide school education in all the existing languages and dialects." (Morocco CRC/C/15/Add.60, para. 14)

"The Committee ... recommends that the State Party allocate resources to translate school materials into minority languages with the objective to encourage, in the appropriate regions, schools and teachers to provide education in minority languages." (Myanmar CRC/C/15/Add.69, para. 39)

"The Committee … welcomes the provision in the 1992 Constitution that in the early years of schooling teaching shall be in the student's native language, the provision of instruction in both Spanish and Guaraní…
"The Committee is concerned that adequate measures have not yet been taken to fully guarantee in practice the right of indigenous students to education in their native language, Guaraní…
"The Committee recommends that the authorities take all appropriate measures to guarantee the full implementation of the right of the child to be educated in his/her language." (Paraguay CRC/C/15/Add.75, paras. 3, 24 and 46)

It has also suggested the teaching of a minority language:

"The Committee also suggests that the State Party provide further support to the teaching of the Irish language in schools in Northern Ireland..." (United Kingdom CRC/C/15/Add.34, para. 33)

However, sometimes teaching children solely in their mother tongue may not be to their advantage, because it may ultimately disadvantage them. For example, the Committee took up this question with Estonia, which has a large Russian-speaking population:

"While welcoming the Programme on Integration in Estonian Society, 2000-2007, the Committee notes the tension arising around the question of the language of instruction of children belonging to minority groups in Estonia.
"The Committee recommends that the State Party:
(a) Take all measures to implement effectively Regulation No. 209 for mother tongue instruction for students whose mother tongue is not Estonian;
(b) Implement the Programme on Integration in Estonian Society in such a way that all the children of Estonia will be taught about the culture, history and identity of the various groups living in Estonia and that exchanges are organized between pupils of different schools in order to foster contacts, friendships and mutual respect among children from all groups of society;
(c) Guarantee the quality of instruction of the Estonian language to children belonging to minority groups so as to ensure that minority-language-speaking children can participate on a more equal level with Estonian-speaking children, in particular at higher education levels." (Estonia CRC/C/15/Add.196, paras. 52 and 53)

Similarly, the Committee raised concerns with China

"... about reports that school attendance in minority areas, including the Tibet Autonomous Region, is lagging behind, that the quality of education is inferior and that insufficient efforts have been made to develop a bilingual education system which would include adequate teaching in Chinese. These shortcomings may disadvantage Tibetan and other minority pupils applying to secondary and higher level schools..."

The Committee suggested

"... that a review be undertaken of measures to ensure that children in the Tibet Autonomous Region and other minority areas are guaranteed full opportunities to develop knowledge about their own language and culture as well as to learn the Chinese language. Steps should be taken to protect these children from discrimination and to ensure their access to higher education on an equal footing." (China CRC/C/15/Add.56, paras. 19 and 40)

The concept of "bilingual intercultural education" is proposed, for example to Panama:

The Committee… recommends that the State Party pay particular attention to guarantee the preservation of the identity of indigenous and Afro-Panamanian children, e.g. by the implementation of the national plan to develop bilingual intercultural education." (Panama CRC/C/15/Add.233, para. 64)

Whichever course is adopted, teachers must be appropriately trained:

"In the light of article 30 of the Convention, [the Committee] is also worried about the insufficient number of teachers capable of working with minority children...
"... and encourages the relevant authorities to undertake all appropriate measures... to ensure that sufficient teachers for minority children are available in all regions of the country." (Finland CRC/C/15/Add.53, paras. 18 and 28)

"With respect to indigenous communities, the Committee takes note of the State Party's efforts to increase the number of schools providing bilingual education. It is however concerned at the insufficient number of indigenous teachers and schools, and at the fact that education does not fully take into account indigenous culture.
"The Committee recommends that the State Party continue to increase the number of indigenous schools and adequately trained indigenous teachers, and ensure the right of indigenous children to learn to read and write in their own language through methods adapted to their own culture...." (Costa Rica CRC/C/15/Add.266, paras. 57 and 58)

The Committee has taken particular pains to recommend that the provisions of the Convention and other human rights are translated into all minority languages, for example:

"In view of the State Party's willingness to develop a culture of human rights and to change attitudes towards children in general and the indigenous population in particular, the Committee recommends that information and education about children's rights be disseminated among children and adults alike. It is also recommended that consideration be given to the translation of such information into the main indigenous languages and that appropriate measures be adopted to spread such information in such a way that it reaches groups affected by a high level of illiteracy. In the light of the considerable experience of the United Nations Children's Fund and other organizations in responding to such challenges, it is recommended that international cooperation be sought in this regard." (Guatemala CRC/C/15/Add.58, para. 29)

"The Committee recommends that the State Party take all necessary measures to protect the rights of indigenous children against discrimination and to guarantee their enjoyment of the rights enshrined in domestic law and in the Convention. The Committee further recommends that the State Party provide indigenous communities with sufficient information, in their own language as well as in a child-friendly format, regarding birth registration procedures, child labour, education and health, HIV/AIDS, child abuse and neglect, including corporal punishment, and on themes covered by the Optional Protocols to the Convention…" (Mexico CRC/C/MEX/CO/3, para. 73)

The Committee has also recommended the translation of the State's Periodic Reports and the Committee's Concluding Observations (which of course include important statements relating to specific minority groups). For example:

"The Committee recommends that the report of the State Party, the records of the dialogue held between itself and the State delegation and the Concluding Observations adopted by the Committee be widely disseminated throughout the nation in all minority languages as well as in Croatian…" (Croatia CRC/C/15/Add.52, para. 28)

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 30, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 30 is relevant to the **departments of education, home affairs, social welfare, health, media and communications**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 30 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 30 likely to include the training of **teachers, social workers and police**)?

• Specific issues in implementing article 30

- ☐ Are measures taken to identify population groups of children belonging to an ethnic, religious or linguistic minority or who are of indigenous origin?
- ☐ Are measures taken to ensure that such children are not denied the right to enjoy their own culture in community with members of their group?
- ☐ Are measures taken to ensure that such children are not denied the right to profess or practise their own religion in community with members of their own group?
- ☐ Are measures taken to ensure that such children are not denied the right to use their own language in community with members of their group?

Do these measures include action taken

- ☐ in school?
- ☐ in the mass media?
- ☐ when children are separated for any reason from their parents, family or community?
- ☐ in legal proceedings?

- ☐ Where such children are taught in their mother tongue, are they also taught the majority language?

How to use the checklist, *see page XIX*

article 30

- ☐ Where such children are, for whatever reason, not fluent in the language used by their minority group, are measures available for teaching them this language?
- ☐ Are the provisions of the Convention, the Initial and Periodic Reports and all proceedings of and with the Committee on the Rights of the Child translated into all minority languages?
- ☐ Are children's rights against interference in their culture, religion and language under this article protected and enforceable in law?
- ☐ Has the State considered the implications for law policy and practice of the Declaration on the Rights of Indigenous People?
- ☐ Are Government-sponsored campaigns initiated, where necessary, to combat prejudice against minorities or indigenous groups?
- ☐ Have children from these groups been asked whether the measures taken under this article are appropriate or sufficient?

Reminder: **The Convention is indivisible and its articles interdependent. Article 30 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 30 include:

Article 5: respect for responsibilities of extended family or community for the child
Article 8: right to preserve identity
Article 16: protection from arbitrary interference in family and home
Article 20: continuity of ethnic, religious, cultural and linguistic background if placed away from family
Article 21: intercountry adoption only to be considered if the child cannot be cared for in his or her own country
Article 22: special protection for refugee children
Article 24: protection from traditional practices prejudicial to health
Article 28: education to be provided on the basis of equal opportunity
Article 29: education to be directed to development of respect for all cultures and friendship between all peoples
Article 40: right to an interpreter in the juvenile justice system

Child's right to leisure, play and culture

Text of Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 31 concerns the child's rights to rest, leisure, play and recreational activities and to participate in cultural and artistic life.

The words "rest", "leisure", "play" and "recreational activities" appear on one level to be synonymous, because they are all about not working. But although not working is a unifying factor, the four words contain important differences. "Rest" includes the basic necessities of physical or mental relaxation and sleep, "leisure" is a wider term implying having the time and freedom to do as one pleases, "recreational activities" embrace the whole range of activities undertaken by choice for the purposes of pleasure (including a number which can simultaneously be termed work, such as sports, arts, crafts and scientific or agricultural pursuits) and "play" is arguably the most interesting in terms of childhood, in that it includes children's activities which are not controlled by adults and which do not necessarily conform to any rules.

Children's right to play is sometimes referred to as the "forgotten right", perhaps because it appears to the adult world as a luxury rather than a necessity of life, and because children always find ways and means of playing, even in the most dire circumstances. But play is an essential part of development: children who are unable to play, for whatever reason, may lack important social and personal skills.

Children's cultural rights include both their right of access to cultural and artistic events, and their right to undertake such activities themselves – both to join with adults in appropriate cultural and artistic pursuits and to enjoy their own. (The word "culture" in the rest of the Convention is used to refer to traditions and customs; in article 31 the word "cultural" appears to be used in its artistic sense.) ■

Summary

Background

Principle 7 of the 1959 Declaration of the Rights of the Child states: "The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right." Article 31 of the Convention on the Rights of the Child noticeably does not prescribe the purpose of play and recreation. Children are just as entitled as adults to forms of play and recreation which appear purposeless to others, though adults do have responsibilities to prevent them from engaging in leisure pursuits which are actively harmful.

The *Manual on Human Rights Reporting*, 1997, comments that the Convention's article 31 "should also be considered in combination with other relevant articles of the Convention, which will lead to recognition that the right to play and recreation should be taken into account in the framework of the right to education, thus contributing to the development of the child's abilities to their fullest potential. Similarly, in those specific circumstances, activities and ages under which children below 18 may work, in the light of article 32, the right to rest and leisure should be equally and necessarily ensured. In situations covered by article 39 relating to the recovery and social reintegration of the child victim of any form of neglect, exploitation and abuse, torture or armed conflicts, the engagement in play and recreational activities may further gain an instrumental and healing role by promoting the child's self-esteem and trust and his or her growing participation in life." The *Manual* also points out that sports activities and competitions in leisure pursuits "which may seem to be primarily designed to promote the child's well-being" should not damage the child's physical or psychological development (*Manual*, p. 468; see also article 36, page 543).

In its General Comment No. 7 on "Implementing child rights in early childhood", the Committee notes that

"… insufficient attention has been given by States Parties and others to the implementation of the provisions of article 31."

The General Comment continues:

"… Play is one of the most distinctive features of early childhood. Through play, children both enjoy and challenge their current capacities, whether they are playing alone or with others. The value of creative play and exploratory learning is widely recognized in early childhood education. Yet realizing the right to rest, leisure and play is often hindered by a shortage of opportunities for young children to meet, play and interact in child-centred, secure, supportive, stimulating and stress-free environments. Children's right-to-play space is especially at risk in many urban environments, where the design and density of housing, commercial centres and transport systems combine with noise, pollution and all manner of dangers to create a hazardous environment for young children. Children's right to play can also be frustrated by excessive domestic chores (especially affecting girls) or by competitive schooling. Accordingly, the Committee appeals to States Parties, non-governmental organizations and private actors to identify and remove potential obstacles to the enjoyment of these rights by the youngest children, including as part of poverty reduction strategies. Planning for towns, and leisure and play facilities should take account of children's right to express their views (art. 12), through appropriate consultations. In all these respects, States Parties are encouraged to pay greater attention and allocate adequate resources (human and financial) to the implementation of the right to rest, leisure and play." (Committee on the Rights of the Child, General Comment No. 7, 2006, CRC/C/GC/7/Rev.1, para. 34)

Children's right to "rest and leisure"

Rest is almost as important to children's development as the basics of nutrition, housing, health care and education. Indeed, over-tired children may be unable to learn and are more susceptible to illness. A primary responsibility of ratifying States is, therefore, to ensure that children who work have adequate time for sleep and relaxation. The ILO Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No.79) and the ILO Night Work of Young Persons (Industry) Convention (Revised), 1948 (No.90) protect children from working at night. The ideal principle set out in these provisions is that children under the age of 14 or in full-time education should have a consecutive period of 14 hours to rest including the period between eight o'clock in the evening and eight o'clock in the morning (article 2(1) of ILO Convention (No.79)), that all children under the age of 16 should have 12 hours' rest (article 3 of Convention (No.79) and article 2 of Convention No.90)), and 16- to 18-year-olds at least seven hours (article 2 of Convention (No.90)).

These are qualified safeguards – for example, States are permitted to exempt children from these Conventions if they are in domestic service or are working in non-hazardous occupations with their families; and yet millions of children

across the world work long hours in conditions of near slavery as domestic workers, and many more are forced by their family circumstances to work in family enterprises without adequate rest or education throughout most of their childhood.

The right to leisure encompasses more than just having sufficient time to sleep at night. Discussion under articles 29 and 32 explores the problems engendered by children's need to work and the complex relationship between children's work and education. Article 31 is necessary as a reminder that, in addition, children need some space for themselves between work and education (article 16, the right to privacy, may also be relevant).

In the drafting sessions Canada proposed an amendment requiring "parents, States Parties, educational institutions and others caring for children" to make "reasonable limitations on school and working hours" (E/CN.4/1983/62, Annex II; Detrick, p. 415). Countries have very different legal interpretations of how many hours compulsory education should take up in a year and very different practices relating to homework (school work done at home). Some countries have customs and laws reserving one day of the week and additional religious festivals as free from work; others have regulations which ensure that children are only permitted to work for remuneration on one day of each weekend and only a portion of school holidays; others ensure that the school day has frequent rest periods. Children in compulsory schooling are, after all, already working full time if homework is taken into account – indeed, often being forced into overtime in adult terms. If they undertake paid work in addition to schooling, they may rarely have a minute off for months on end.

During discussion of El Salvador's Initial Report, a Committee member stated: "As far as the employment of children was concerned, while legislation appeared to draw a balance between work and school, access to education did not only mean school attendance. It also meant ensuring that a child had the time to think about what he was learning, to do homework, and also to have the time to play and be a child." (El Salvador CRC/C/SR.86, para. 62)

The Committee raised such concerns with, for example, Japan and Lithuania:

"The Committee notes the State Party's efforts to reform the education system and bring it into greater conformity with the Convention; however, it is concerned that... the excessively competitive nature of the education system has a negative effect on the children's physical and mental health and hampers the development of the child to his or her fullest potential..." (Japan CRC/C/15/Add.231, para. 49)

"The Committee notes with concern that the State Party has not given adequate consideration to the rights of children to rest and leisure ... [and] ... at the increase in the school workload, which causes stress and tension among students.
"The Committee recommends that the State Party pay adequate attention to planning leisure and cultural activities for children, taking into consideration the physical and psychological development of the child... Furthermore, the Committee recommends that the State Party review the school programmes to reduce the stress level of students and help them deal with its effects." (Lithuania CRC/C/LTU/CO/2, paras. 58 and 59)

Lack of rest and leisure time is not just a problem for rich countries. Children in poor countries are often, of course, exposed to overwork and related stress. For example, the Committee raised its concerns with Benin:

"... that the right to rest is not systematically recognized to children in informal education or to working children." (Benin CRC/C/BEN/CO/2, para. 63)

Children's participation in adult forms of recreation can be extremely taxing and brutal as, for example, the Committee pointed out to the United Arab Emirates:

"Despite noting some efforts by the State Party, the Committee is seriously concerned at the hazardous situation of children involved in camel racing. In particular, it is concerned that very young children are sometimes involved; that children are trafficked, particularly from Africa and South Asia, for this purpose; that children are denied education and health care; and that such involvement produces serious injuries, even fatalities. It concurs with the ILO Committee of Experts on the Application of Conventions and Recommendations, which has previously indicated to the State Party that the employment of children as camel jockeys constitutes dangerous work under article 3, paragraph 1, of ILO Convention No.138." (United Arab Emirates CRC/C/15/Add.183, para. 40)

Right to "engage in play and recreational activities appropriate to the age of the child"

As discussed above, play and recreational activities can be distinguished from each other in so far as play is unstructured and free from adult direction (although it may be facilitated and overseen by adults), whereas recreational activities

Declaration of the Child's Right to Play

The International Association for the Child's Right to Play (IPA, given consultative status with UNESCO and UNICEF) adopted a *Declaration of the Child's Right to Play*, which states a deep concern about:

"… a number of alarming trends and their negative impact on children's development:

- Society's indifference to the importance of play;
- Over-emphasis on theoretical and academic studies in schools;
- Increasing numbers of children living with inadequate provisions for survival and development;
- Inadequate environmental planning, which results in a lack of basic amenities, inappropriate housing forms, and poor traffic management;
- Increasing commercial exploitation of children and the deterioration of cultural traditions;
- Lack of access for third world women to basic training in child care and development;
- Inadequate preparation of children to cope with life in a rapidly changing community;
- Increasing segregation of children in the community;
- The increasing numbers of working children, and their unacceptable working conditions;
- Constant exposure of children to war, violence, exploitation and destruction;
- Over-emphasis on unhealthy competition and 'winning at all costs' in children's sports."

The Declaration calls for action by five government departments: health, education, welfare, leisure and planning, for more play-oriented professionals and for fewer commercial or violent games and toys.

are largely defined by adults and, indeed, include many elements of a school curriculum – sports, performing and creative arts, mathematics and technology and so forth. However, one of the defining characteristics of both play and recreation is that they are not compulsory.

Few countries give adequate priority to children's right to "play". The haphazard, anarchic nature of play contributes nothing obvious to the nation's economy or international profile. However, play does contribute a great deal to children's physical and psychological health. Many social skills, such as negotiation, sharing and self-control, are gained through unsupervised play with other children. In terms of physical development, it is essential that children spend time exercising their bodies.

Although the range of children's play is enormous and ever-changing, children's basic play needs are relatively simple. All that is required is safe, accessible space for children's use, preferably containing possibilities for creating or changing things, for exploring and physical exertion.

The Committee has therefore encouraged governments to promote children's play:

"The Committee is concerned that children living in urban centres have very few areas, such as parks, in which they can play safely and that the State Party itself notes in its report the absence of parks in the country…
"The Committee recommends that the State Party… ensure the existence of areas, such as parks, within urban centres, which may be used by children for leisure activities; [and] … consider the adoption of legislation or administrative rules, and the allocation of an appropriate budget, to ensure that leisure areas for children are maintained as a priority in urban planning decisions." (Guinea Bissau CRC/C/15/Add.177, paras. 46 and 47)

"The Committee recommends that the State Party improve respect for the right of children to leisure and cultural activities, including by promoting these rights among parents, teachers and community leaders. The Committee recommends that the State Party seek assistance from UNESCO and UNICEF in this regard." (Rwanda CRC/C/15/Add.234, para. 59)

"The Committee shares the concern expressed in the State Party's report that much of the cultural and recreational infrastructure does not function in Albania, and that playgrounds are almost non-existent.

"The Committee recommends that the State Party consider the need for playgrounds and child-friendly parks in city planning and increase efforts to provide more appropriate spaces for children allowing them to enjoy the right to leisure, recreation and cultural activities." *(Albania CRC/C/15/Add.249, paras. 62 and 63)*

Children's recreational activities tend to be similar to adult recreational pursuits – sports, games, films, crafts and so forth. The questions to be asked here are: do children have equal access to recreational facilities? Are resources for recreational activities equitably distributed between children and adults? And there is also the question: are some children's activities genuinely recreational? Children can be coerced into activities called recreation but which they would not choose to do if left to themselves, and which give them little pleasure. Modern agricultural methods, spiralling traffic demands and poor city planning are all the enemy of children's play. Television and computer games, though providing culture and entertainment, must also be seen as sometimes inimical to play and recreation "appropriate to the age of the child". The Committee has expressed concern about the modern threat of childhood obesity; medical organizations in the developed world are reporting with alarm the "coronary time bomb" arising from the new phenomenon of children spending too much time inside schools, homes and cars, in front of televisions and computers. For example the Committee observed to Mexico:

"The Committee is concerned about the lack of recreational activities, in particular sport facilities and playgrounds, and about the insufficiency of resources and infrastructure to guarantee the right to sport and leisure. The Committee notes with concern the relation between the lack of implementation of this right and the increase of children obesity.
"The Committee recommends that the State Party ensure that all children have access to sport and recreational activities by;
(a) Increasing the hours and quality of sport programmes in schools;
(b) Developing specific sports and leisure programmes for children and adolescents;
(c) Increase allocation of resources for the development of infrastructure and of recreational and cultural activities." *(Mexico CRC/C/MEX/CO/3, paras. 58 and 59)*

Children's right "to participate freely in cultural life and the arts"

This right encompasses both the right of children to join with adults in their cultural and artistic pursuits and the right to child-centred culture and arts; it also includes the right of children to be both consumers and producers of arts and culture. The Committee has suggested a range of activities to which children should have access:

"The Committee recommends that the State Party organize cultural after-school activities such as drawing, plastic arts, dance and music, in participation with children, and make available free and accessible public sports facilities." *(Netherlands Antilles CRC/C/15/Add.186, para. 55)*

Thus, children should not be barred from adult events or performances without good reason (for example, because the child might be psychologically harmed or because young infants might disrupt a performance). In addition, children should be given opportunities to participate in all forms of cultural and artistic activity as well as enjoy performances and exhibitions designed specifically for their pleasure.

This right obviously relates to children's rights under article 13 (freedom of expression), article 15 (freedom of association), article 17 (access to the media and to children's books) and article 30 (enjoyment of minority cultures). And, given the essentially voluntary and pleasurable nature of the right, the principles of article 12 (taking account of children's views) should be given high priority. It should be noted that children's views of what they want in recreational pursuits are often energetically sought by the commercial world for marketing purpose; these views do, indeed, determine what children get, but, unfortunately, often in terms of the lowest common denominator. Children's participation should be sought by those planning more creative and stimulating cultural activities.

States Parties' obligations to promote and encourage opportunities for children's participation in cultural, artistic, recreational and leisure activities

Because children tend to lack power and money, they are usually dependent on the adult world, including the government, for their access to recreational, sporting and cultural opportunities. Mongolia painted a bleak picture to the Committee of the leisure activities of children in its post-communist period, which highlights the need for active state measures: "We could say that before 1990 there existed a complex system of activities for children to be involved in during their leisure time. But with the political and economic reform,

the change in the administrative units of Mongolia and the reorganization of public organizations, certain changes have transpired with regard to their functions, structure and activities. With privatization, many of the cultural clubs, libraries, cinema houses, sport halls and museums were closed down over the last three years; many of the establishments designed to conduct children's activities have changed their orientation. As a result, the number of children attending leisure-time activities has necessarily been decreased. The decline in the number of children participating in these activities is closely linked to the introduction of fees for all these courses and activities. There is a new demand to conduct activities linked with production of marketable goods..." (Mongolia CRC/C/3/Add.32, para. 200)

Ten years after this report the situation had worsened:

"The Committee notes with concern the insufficient number of recreational and cultural activities and facilities for children living in cities and that many playgrounds built for them have been destroyed during the last decade.
"In the light of article 31 of the Convention, the Committee recommends that the State Party pay attention to the right of the child to engage in play and increase its efforts to promote and protect the right of the child to rest, leisure, cultural and recreational activities by allocating adequate human and financial resources to the implementation of this right, including by designing and building safe playgrounds for children living in cities." *(Mongolia CRC/C/15/Add.264, paras. 54 and 55)*

Analysis of government spending on culture, sports and the arts often reveals an unjustifiably small proportion of resources being used for children's benefit. The Committee is increasingly stressing the importance of States taking an active role in the implementation of article 31:

"The Committee is concerned that while the child's right to leisure, recreation, and cultural activities is recognized within the principles of legislation guiding service development, this right is not ensured explicitly within such legislation. The Committee further notes that existing recreational facilities are not always accessible to all children." *(Saint Lucia CRC/C/15/Add.258, para. 64)*

"While welcoming initiatives such as the National Play Policy which contains several activities and responsibilities for a number of government departments, local authorities and health boards and enhances the opportunities for children to enjoy leisure, recreation and cultural activities, the Committee is concerned that little political and financial importance is given to the creation of recreational facilities and that increasing housing demands may further hamper the developments of playgrounds and public space.
"The Committee recommends that the State Party place more emphasis on the creation of facilities for children to enjoy leisure, recreation and cultural activities." *(Ireland CRC/C/IRL/CO/2, paras. 62 and 63)*

Equal opportunities

Along with many of the Convention's provisions, certain categories of children need more attention and resources in order to enjoy their rights under article 31. Poor children are not necessarily deprived of leisure and culture – children from the poorest communities of the world have some of the richest lives in these terms. But poverty of environments, particularly in urban ghettos, the cost of many modern recreational activities and the need to work are obvious obstacles to the exercise of article 31's rights. State measures in this area may, therefore, have to be targeted on poorer children. The Committee has expressed concern about discrimination in relation to article 31:

"The Committee notes with concern that many children, especially in Black communities, do not enjoy the right to leisure, recreation and cultural activities... In the light of article 31, the Committee recommends that the State Party take effective measures to ensure that children, especially those in Black communities, enjoy the right to leisure, recreation and cultural activities." *(South Africa CRC/C/15/Add.122, para. 34)*

"Notwithstanding the State Party's efforts to develop and organize sports and cultural activities for children, the Committee notes with concern the insufficient number of recreational and cultural activities and facilities for children and the discrepancies between barangays in this respect. The Committee is concerned that there are several groups of children, such as children not involved in primary education, child labourers and street children, who neither have equal right to enjoy their right to rest and leisure nor to engage in play, sport, recreational and cultural activities.
"In the light of article 31 of the Convention, the Committee recommends that the State Party make all necessary efforts to protect the right of the child to rest, leisure, cultural and recreational activities. The Committee recommends that the State Party strengthen its efforts to promote the right of the child to engage in play by providing children with creative play facilities. It requests the allocation of adequate human and financial resources to the implementation of this right

and the payment of particular attention to vulnerable groups of children, such as children outside of the educational system, child labourers and street children." *(Philippines CRC/C/15/Add.259, paras. 71 and 72)*

Resources should be directed towards children of all ages. Infants and younger children are as much in need of the stimulation and enjoyment of recreation as are older children, as was pointed out to Belize :

"The Committee expresses its concern at the lack of policies and programmes aimed at mother and child interaction activities within the home to promote leisure and creative play for children, particularly those under the age of two years. The Committee notes that such activities have a crucial bearing on the development of the child's cognitive abilities and their social and emotional development. In the light of article 31 of the Convention, the Committee recommends that the State Party undertake studies on play involving mother and child interaction with a view to developing adequate programmes and policies in this regard." *(Belize CR/C/15/Add.99, para. 23)*

In addition, children with disabilities need particular assistance in gaining access to or using recreational facilities and particular stress needs to be given to inclusive forms of recreation. Children with disabilities may still be receiving special education separately from their peers (contrary to their human rights, see article 23, page 321); so recreation may be the only opportunity for integrated activities and is thus particularly important. The Convention on the Rights of Persons with Disabilities, adopted in December 2006, provides:

"1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

(a) Enjoy access to cultural materials in accessible formats;

(b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;

(c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance…

5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:

(a) To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;

(b) To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;

(c) To ensure that persons with disabilities have access to sporting, recreational and tourism venues;

(d) To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;

(e) To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities." (Article 30)

In its General Comment No. 9 on "The rights of children with disabilities", the Committee states:

"… Play has been recognized as the best source of learning various skills, including social skills. The attainment of full inclusion of children with disabilities in the society is realized when children are given the opportunity, places, and time to play with each other (children with disabilities and no disabilities). Training for recreation, leisure and play should be included for school-aged children with disabilities.

"Children with disabilities should be provided with equal opportunities to participate in various cultural and arts activities as well as sports. These activities must be viewed as both medium of expression and medium of realizing self-satisfying, quality of life.

"Competitive and non-competitive sports activities must be designed to include children with disabilities in an inclusive form whenever possible. That is to say, a child with a disability who is able to compete with children with no disability should be encouraged and supported to do so. But sports are an area where, because of the physical demands of the sport, children with disabilities will often need to have exclusive games and activities where they can compete fairly and safely. It must be emphasized though that when such exclusive events take place, the media must play its role responsibly by giving the same attention as it does to sports for children with no disabilities." *(Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, paras. 44 to 46)*

Children in closed institutions, such as hospitals or forms of detention, will also require special measures. The Committee told Hong Kong that it

"... notes with appreciation the initiatives taken to make hospitals more baby- and child-friendly, including the measures being taken to... provide play areas for children in paediatric wards." (United Kingdom dependent territory: Hong Kong CRC/C/15/Add.63, para. 7)

As regards children whose liberty has been restricted, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty is quite clear on their rights:

"18(c). Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice...

"47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it."

Finally, although not specifically raised by the Committee, the discrimination against girls in this area should be mentioned, since it is an almost universal phenomenon that domestic chores give girls less time to play than boys, and that where play space is available boys take up an unequal amount. Adults cooperating with children can usually remedy this, but measures are needed.

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

article 31

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 31, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 31 is relevant to the **departments of culture and sport, education, labour, health, welfare and planning**)
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 31 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 31 likely to include the training of **play workers, town and environment planners, employment inspectors, administrators of art and culture, artists, teachers and social workers**)?

• Specific issues in implementing article 31

- ☐ Are necessary measures taken to secure the right of the child to rest and leisure?
- ☐ Do such measures include prohibitions on children working at night or working throughout all school holiday periods?
- ☐ Have ILO Conventions Nos.79 and 90 been ratified?
- ☐ Do compulsory school hours and homework regimes allow for rest and leisure periods?
- ☐ Does environmental planning take into account the play needs of children?
- ☐ Does this planning take account of children's views of what is needed?
- ☐ Are play and recreational opportunities appropriate to all ages of children (including preschoolers and teenagers) available without discrimination?
- ☐ Are resources allocated for sports, culture and the arts divided fairly between adults and children?
- ☐ Do all children have reasonable access to all cultural and artistic events?

How to use the checklist, *see page XIX*

article 31

- ☐ Are there any limitations on the participation of all children in cultural life and the arts?
- ☐ Are cultural and artistic events organized specially for children?
- ☐ Are children given access to cultural and artistic events through financial concessions or discounts?
- ☐ Do children with disabilities have access to integrated recreational, cultural and artistic activities?
- ☐ Do children in hospital have opportunities for play and recreational activities?
- ☐ Do children in institutions have opportunities for play, sports and recreational, artistic and cultural activities?
- ☐ Do children whose liberty has been restricted have opportunities for physical exercise, recreation and artistic or cultural activities?
- ☐ Are measures taken to ensure that girls have as equal an opportunity as boys for rest, leisure, play and recreation and to enjoy cultural and artistic activities?

Reminder: **The Convention is indivisible and its articles interdependent. Article 31 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 31 include:

Article 13: freedom of expression
Article 14: freedom of thought, conscience and religion
Article 15: freedom of association
Article 16: protection of privacy
Article 17: access to information, role of the media
Article 23: children with disabilities
Article 28: aims of education
Article 30: respect for minority or indigenous culture
Article 32: child labour
Article 36: protection from exploitation

Child labour

Text of Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Summary

Article 32 recognizes the right of the child to be protected from economic exploitation; and from any work that is likely to be hazardous, or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. The article requires States Parties to take legislative, administrative, social and educational measures to ensure implementation, and in particular to provide:

- a minimum age or ages for admission to employment;
- appropriate regulation of the hours and conditions of employment; and
- appropriate penalties or other sanctions to ensure effective enforcement.

States Parties must have regard "to the relevant provisions of other international instruments": the most relevant are International Labour Organization (ILO) Conventions and Recommendations, including in particular the Minimum Age Convention, 1973 (No.138) and the Worst Forms of Child Labour Convention, 1999 (No.182) (see pages 729 and 759). The Committee on the Rights of the Child consistently encourages States Parties to ratify these Conventions. ■

International instruments and standards concerning child labour

The International Labour Organization (ILO)

In its 2006 Global Report, *The end of child labour: Within reach*, ILO reports: "In 2004 there were 218 million children trapped in child labour, of whom 126 million were in hazardous work. Although the participation of girls in child labour and hazardous work is on a par with that of boys in the youngest age group (5-11 years), boys predominate considerably at older ages in both categories. However, the number of child labourers globally fell by 11 per cent over the last four years, while that of children in hazardous work decreased by 26 per cent. For the age group of 5-14 years the decline in hazardous work was even steeper – by 33 per cent. The global picture that emerges is that child work is declining, and the more harmful the work and the more vulnerable the children involved, the faster the decline.

"Latin America and the Caribbean are making the greatest progress – the number of children at work has fallen by two-thirds over the last four years, with just 5 per cent of children now engaged in work. The least progress has been made in sub-Saharan Africa, where the rates of population growth, HIV/AIDS infection and child labour remain alarmingly high." (Report of the Director-General, *The end of child labour: Within reach*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 95th Session, 2006, Report I (B), Executive Summary, p. XI)

These estimates do not cover children who are engaged in regular non-economic activities, including those who provide services of a domestic nature on a full-time basis in their parents' or guardians' households. While a majority are in developing countries, there are pockets of child labour in industrialized countries. Data suggests that more boys than girls work. The International Conference of Labour Statisticians (ICLS) to be held in 2008 will discuss the international guidance for statistical measurement of child labour, including the issue of non-economic activities. ILO has also developed the Statistical Information and Monitoring Programme (SIMPOC) to assist individual States in generating comprehensive quantitative and qualitative data on child labour (see www.ilo.org/public/english/standards/ipec/simpoc/index.htm).

In its 2002 first Global Report, *A future without child labour*, ILO reported: "Millions of children worldwide are engaged in labour that is hindering their education, development and future livelihoods; many of them are involved in the worst forms of child labour that cause irreversible physical or psychological damage, or that even threaten their lives. This situation represents an intolerable violation of the rights of individual children, it perpetuates poverty and it compromises economic growth and equitable development." (Report of the Director-General, *A future without child labour*, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 90th Session, 2002, Report I (B), Executive Summary, p. IX)

The Report clarifies the boundaries of child labour for abolition. The term "child labour", as used here, does not encompass all work performed by children under the age of 18, but that which violates international standards. Many children, in very different national circumstances, carry out work that is entirely consistent with their education and full physical and mental development. Drawing on the provisions of Conventions No.138 and No.182, the Report identifies three categories of child labour to be abolished:

(1) Labour performed by a child who is *under a minimum age* specified in national legislation in line with international standards for that kind of work.

(2) Labour that jeopardizes the physical, mental or moral well-being of a child, known as *hazardous work*.

(3) The *unconditional worst forms of child labour,* which are internationally defined as slavery, trafficking, debt bondage and other forms of forced labour, forced recruitment for use in armed conflict, prostitution and pornography and illicit activities. (Executive Summary, p. X)

The Report notes the difficulties of monitoring and assessing the extent of child labour: "Regardless of the economic sector in which it occurs, and almost by definition, child labour is associated closely with the unregulated informal economy, which is largely beyond the reach of formal institutions, including labour inspection services. Although media coverage has tended to focus public attention on certain groups of child labourers, such as street children, those in export-oriented manufacturing and those in commercial sexual exploitation by foreign tourists, such groups are numerically in the minority. The majority of working children, some 70 per cent, are in reality

to be found in the agricultural sector, most often on small-scale family holdings, but also on commercial agricultural plantations. While this work may in some cases be natural, many aspects of it – for example, long hours, and use of poisonous chemicals or inappropriate or dangerous equipment – can be extremely hazardous.

"Children in developing countries are not the only ones affected by the hazards of agricultural work. The report shows that in some industrialized countries this sector accounts for the largest number of occupational fatalities of those under 18.

"Some child labourers are highly visible, such as street children working in the urban informal economy. Others, such as child domestic workers, are effectively hidden from public view and are thus particularly vulnerable, including to physical, emotional and sexual abuse. Rather than working in formal sector establishments that produce for export, the majority of child labourers in manufacturing toil in supply chains producing for the domestic market, for example, in the production of fireworks, matches or incense sticks. A reported increase in home-based production of these and other goods, in response to heightened competitive pressures, brings with it an increased potential for exploitation of child labour. Such hidden groups of children present particular challenges for research and effective action." (Executive Summary, p. XI)

Having reviewed children's participation in what are generally legitimate sectors of economic activity, in which the type or conditions of work transform it into unacceptable child labour, *A future without child labour* addresses the unconditional "worst forms of child labour", which in all cases represent extreme violations of children's rights. Labour practices such as child trafficking, debt bondage and forced recruitment into armed conflict, as well as child labour in prostitution, pornography and illicit activities such as the drugs trade, are tragically all too prevalent today. Although it is impossible to know the extent of such activities with any degree of precision, their devastating effects on their child victims are obvious and increasingly being brought to the world's attention.

The Report says that available estimates of children's involvement in the unconditional "worst forms of child labour" indicate (in 2000) a global total of at least 8.4 million girls and boys of all ages. "The majority of these (two-thirds of the total) is thought to be trapped in forms of forced and bonded labour. Approximately one-fifth, nearly 2 million children, is believed to be exploited through prostitution and pornography." (*A future without child labour*, Part I, para. 51, p. 17)

International labour conventions

Since 1919, the International Labour Organization has adopted a number of international conventions concerning child labour (see box, page 482), which are supplemented by recommendations. The Minimum Age (Industry) Convention, 1919 (No.5) prohibits children under the age of 14 from working in industrial establishments. Subsequently, other sectoral conventions on the minimum age of admission to employment were adopted, applying to industry, agriculture, trimmers and stokers, maritime work, non-industrial employment, fishing and underground work. Many other ILO standards contain provisions setting minimum ages for various activities. Furthermore, general international labour conventions regarding freedom of association, non-discrimination, the abolition of forced labour, wages and safety and health apply to all workers regardless of age. Conventions (No.138) and (No.182) are considered as fundamental and form part of the principles to be respected by all ILO Member States under the ILO Declaration on the Fundamental Principles and Rights at Work (1998).

ILO Minimum Age Convention (No.138) and Recommendation (No.146)

The most comprehensive ILO instrument on child labour is the Minimum Age Convention, 1973 (No.138), supplemented by Recommendation (No.146). Convention (No.138), in particular, has been upheld by the Committee on the Rights of the Child as a relevant standard, and States Parties that have not already ratified it have been urged to do so by the Committee (see below, page 495). The Minimum Age Convention is a consolidation of principles that had been gradually established in various earlier instruments and applies to all sectors of economic activity, whether the children are employed for wages or not (for details, see "ages" below, page 495). According to ILO: "The Convention obliges ratifying States to fix a minimum age for admission to employment or work and undertake to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. The Convention was not intended as a static instrument prescribing a fixed minimum standard but as a dynamic one aimed at encouraging the progressive improvement of standards and of promoting sustained action to

ILO Conventions particularly relating to children

Minimum Age (Industry) Convention, 1919 (No.5);

Night Work of Young Persons (Industry) Convention, 1919 (No.6);

Minimum Age (Sea) Convention, 1920 (No.7);

Minimum Age (Agriculture) Convention, 1921 (No.10);

Minimum Age (Trimmers and Stokers) Convention, 1921 (No.15);

Forced Labour Convention, 1930 (No.29);

Minimum Age (Non-Industrial Employment) Convention, 1932 (No.33);

Minimum Age (Sea) Convention (Revised), 1936 (No.58);

Minimum Age (Industry) Convention (Revised), 1937 (No.59);

Minimum Age (Non-industrial Employment) Convention (Revised), 1937 (No.60);

Medical Examination of Young Persons (Industry) Convention, 1946 (No.77);

Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No.78);

Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No.79);

Night Work of Young Persons (Industry) Convention (Revised), 1948 (No.90);

Minimum Age (Fishermen) Convention, 1959 (No.112);

Minimum Age (Underground Work) Convention, 1965 (No.123);

Medical Examination of Young Persons (Underground Work) Convention, 1965 (No.124);

Minimum Age Convention, 1973 (No.138);

Worst Forms of Child Labour Convention, 1999 (No.182).

attain the objectives. Recommendation (No.146), which supplements Convention (No.138), provides the broad framework and essential policy measures for both the prevention of child labour and its elimination." (*Child labour: Targeting the intolerable*, International Labour Conference, 86th Session, 1998, ILO, Geneva, first published in 1996, p. 19)

By August 2007, 150 countries had ratified Convention (No.138).

ILO 1999 Worst Forms of Child Labour Convention (No.182)

On 17 June 1999, the Worst Forms of Child Labour Convention (No.182), together with the Worst Forms of Child Labour Recommendation (No.190), were adopted by the General Conference of the ILO.

The Convention requires Member States which ratify it to "take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency" (article 1). The Convention applies to all persons under 18, without exception. The "worst forms of child labour" are defined in article 3 (see box, page 487). The definition includes work "likely to harm the health, safety or morals of children". It is left to States to determine what types of work fall within this part of the definition (article 3(d)), in consultation with employers' and workers' organizations and taking into account international standards. Member States must design and implement programmes of action to eliminate the "worst forms of child labour" as a priority, design appropriate mechanisms for monitoring implementation, take time-bound measures for prevention, provide support for the removal of children from the "worst forms of child labour" and for their rehabilitation and access to free basic education or vocational training. It calls for international cooperation or assistance with implementation, including support for economic development, poverty eradication and education.

The supplementing Recommendation (No.190) offers a wide range of guidelines for action for implementation, including on international cooperation, wide social mobilization (including consulting with the children directly affected by the "worst forms of child labour") and enforcement (see box, page 483).

The Convention came into force on 19 November 2000. By August 2007, it had been ratified by 165 countries. Under the provisions of the ILO Constitution, each Member State has to make an annual report on the application of the conventions to which it is a party. The Constitution also provides for representations alleging non-observance to be made by workers' or employers' organizations (national or international) to a commission established by the Governing Body of ILO. Also complaints may be made by a State alleging non-observance by another State (where both are parties to the Convention). These general procedures cover the child labour Conventions (No.138) and (No.182), even though there is no provision on international monitoring within either Convention.

ILO Worst Forms of Child Labour Recommendation (No.190)

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999, and

Having adopted the Worst Forms of Child Labour Convention, 1999, and

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Worst Forms of Child Labour Convention, 1999;

Adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Recommendation, which may be cited as the Worst Forms of Child Labour Recommendation, 1999.

1. The provisions of this Recommendation supplement those of the Worst Forms of Child Labour Convention, 1999 (hereafter referred to as "the Convention"), and should be applied in conjunction with them.

I. Programmes of action

2. The programmes of action referred to in Article 6 of the Convention should be designed and implemented as a matter of urgency, in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of the children directly affected by the worst forms of child labour, their families and, as appropriate, other concerned groups committed to the aims of the Convention and this Recommendation. Such programmes should aim at, *inter alia*:

   (a) identifying and denouncing the worst forms of child labour;

   (b) preventing the engagement of children in or removing them from the worst forms of child labour, protecting them from reprisals and providing for their rehabilitation and social integration through measures which address their educational, physical and psychological needs;

   (c) giving special attention to:

      (i) younger children;

      (ii) the girl child;

      (iii) the problem of hidden work situations, in which girls are at special risk;

      (iv) other groups of children with special vulnerabilities or needs;

   (d) identifying, reaching out to and working with communities where children are at special risk;

   (e) informing, sensitizing and mobilizing public opinion and concerned groups, including children and their families.

II. Hazardous work

3. In determining the types of work referred to under Article 3(d) of the Convention, and in identifying where they exist, consideration should be given, *inter alia*, to:

   (a) work which exposes children to physical, psychological or sexual abuse;

   (b) work underground, under water, at dangerous heights or in confined spaces;

   (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;

(d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;

(e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

4. For the types of work referred to under Article 3(d) of the Convention and Paragraph 3 above, national laws or regulations or the competent authority could, after consultation with the workers' and employers' organizations concerned, authorize employment or work as from the age of 16 on condition that the health, safety and morals of the children concerned are fully protected, and that the children have received adequate specific instruction or vocational training in the relevant branch of activity.

III. Implementation

5. (1) Detailed information and statistical data on the nature and extent of child labour should be compiled and kept up to date to serve as a basis for determining priorities for national action for the abolition of child labour, in particular for the prohibition and elimination of its worst forms as a matter of urgency.

(2) As far as possible, such information and statistical data should include data disaggregated by sex, age group, occupation, branch of economic activity, status in employment, school attendance and geographical location. The importance of an effective system of birth registration, including the issuing of birth certificates, should be taken into account.

(3) Relevant data concerning violations of national provisions for the prohibition and elimination of the worst forms of child labour should be compiled and kept up to date.

6. The compilation and processing of the information and data referred to in Paragraph 5 above should be carried out with due regard for the right to privacy.

7. The information compiled under Paragraph 5 above should be communicated to the International Labour Office on a regular basis.

8. Members should establish or designate appropriate national mechanisms to monitor the implementation of national provisions for the prohibition and elimination of the worst forms of child labour, after consultation with employers' and workers' organizations.

9. Members should ensure that the competent authorities which have responsibilities for implementing national provisions for the prohibition and elimination of the worst forms of child labour cooperate with each other and coordinate their activities.

10. National laws or regulations or the competent authority should determine the persons to be held responsible in the event of non-compliance with national provisions for the prohibition and elimination of the worst forms of child labour.

11. Members should, in so far as it is compatible with national law, cooperate with international efforts aimed at the prohibition and elimination of the worst forms of child labour as a matter of urgency by:

(a) gathering and exchanging information concerning criminal offences, including those involving international networks;

(b) detecting and prosecuting those involved in the sale and trafficking of children, or in the use, procuring or offering of children for illicit activities, for prostitution, for the production of pornography or for pornographic performances;

(c) registering perpetrators of such offences.

12. Members should provide that the following worst forms of child labour are criminal offences:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; and

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties, or for activities which involve the unlawful carrying or use of firearms or other weapons.

13. Members should ensure that penalties including, where appropriate, criminal penalties are applied for violations of the national provisions for the prohibition and elimination of any type of work referred to in Article 3(d) of the Convention.

14. Members should also provide as a matter of urgency for other criminal, civil or administrative remedies, where appropriate, to ensure the effective enforcement of national provisions for the prohibition and elimination of the worst forms of child labour, such as special supervision of enterprises which have used the worst forms of child labour, and, in cases of persistent violation, consideration of temporary or permanent revoking of permits to operate.

15. Other measures aimed at the prohibition and elimination of the worst forms of child labour might include the following:

(a) informing, sensitizing and mobilizing the general public, including national and local political leaders, parliamentarians and the judiciary;

(b) involving and training employers' and workers' organizations and civic organizations;

(c) providing appropriate training for the government officials concerned, especially inspectors and law enforcement officials, and for other relevant professionals;

(d) providing for the prosecution in their own country of the Member's nationals who commit offences under its national provisions for the prohibition and immediate elimination of the worst forms of child labour even when these offences are committed in another country;

(e) simplifying legal and administrative procedures and ensuring that they are appropriate and prompt;

(f) encouraging the development of policies by undertakings to promote the aims of the Convention;

(g) monitoring and giving publicity to best practices on the elimination of child labour;

(h) giving publicity to legal or other provisions on child labour in the different languages or dialects;

(i) establishing special complaints procedures and making provisions to protect from discrimination and reprisals those who legitimately expose violations of the provisions of the Convention, as well as establishing helplines or points of contact and ombudspersons;

(j) adopting appropriate measures to improve the educational infrastructure and the training of teachers to meet the needs of boys and girls;

(k) as far as possible, taking into account in national programmes of action:

(i) the need for job creation and vocational training for the parents and adults in the families of children working in the conditions covered by the Convention; and

(ii) the need for sensitizing parents to the problem of children working in such conditions.

16. Enhanced international cooperation and/or assistance among Members for the prohibition and effective elimination of the worst forms of child labour should complement national efforts and may, as appropriate, be developed and implemented in consultation with employers' and workers' organizations. Such international cooperation and/or assistance should include:

(a) mobilizing resources for national or international programmes;

(b) mutual legal assistance;

(c) technical assistance including the exchange of information;

(d) support for social and economic development, poverty eradication programmes and universal education.

(Recommendation concerning the prohibition and immediate action for the elimination of the worst forms of child labour (No.190), adopted by the Conference at its eighty-seventh session,Geneva, 17 June 1999)

At its 86th session in June 1998 the International Labour Conference adopted the Declaration on Fundamental Principles and Rights at Work, which declares that all Members, even if they have not ratified specific conventions, have an obligation to respect, promote and realize the fundamental rights which are the subject of the conventions, including the elimination of all forms of forced or compulsory labour and the effective abolition of child labour, together with freedom of association and non-discrimination.

ILO's International Programme on the Elimination of Child Labour

ILO's International Programme on the Elimination of Child Labour (IPEC) currently has operations in 88 countries in five regions of the world. Initiated in 1992, it assists countries in elaborating and implementing comprehensive policies and targeted programmes and projects. Sixty-one of these countries have signed a "Memorandum of Understanding" with the ILO, under which national steering committees are established (for details, see www.ilo.org/child-labour).

Inspired by the requirement of Convention (No.182) to take effective time-bound measures against the worst forms of child labour, ILO/IPEC has developed a "Time-Bound Programme" (TBP) approach to assist countries. TBPs are designed as a comprehensive framework that governments can use to chart a course of action with well-defined targets. They comprise a set of integrated and coordinated policies and interventions with clear goals, specific targets and a defined time frame, aimed at preventing and eliminating a country's worst forms of child labour. They emphasize the need to address the root causes of child labour, linking action for its elimination to national development policy, macroeconomic trends and strategies, and demographic and labour market processes and outcomes, with particular emphasis on economic and social policies to combat poverty and to promote universal basic education and social mobilization. The guiding principles are: country ownership; a comprehensive and integrated approach; broad-based participation; flexibility; planning based on solid data collection and analysis; and systematic programme monitoring and evaluation (for more details, see *TBP Manual for Action Planning*, International Training Centre of the ILO, Turin, Italy, 2003).

Optional Protocols to the Convention on the Rights of the Child

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was adopted by the United Nations General Assembly on 25 May 2000 (for full commentary, see page 669). Its Preamble refers to ILO Convention (No.182). It requires States which ratify the Optional Protocol to ensure, as a minimum, that various acts and activities are fully covered under their criminal or penal law, "whether these offences are committed domestically or transnationally or on an individual or organized basis". These acts and activities include: "offering, obtaining, procuring or providing a child for child prostitution" (defined as "the use of a child in sexual activities for remuneration or any other form of consideration"); and "producing, distributing, disseminating, importing, exporting, offering, selling, or possessing for the above purposes, child pornography" (defined as "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child, the dominant characteristic of which is depiction for a sexual purpose". Among the acts and activities related to sale of children is "the offering, delivering, or accepting by whatever means a child for the purpose of … engagement of the child in forced labour" (article 3(1)).

The other Optional Protocol to the Convention on the Rights of the Child, on the involvement of children in armed conflict, is also relevant to the issues of the "worst forms of child labour" (for full commentary, see page 659).

International Bill of Human Rights and child labour

The International Bill of Human Rights – the Universal Declaration of Human Rights and the two International Covenants, on Economic, Social and Cultural Rights and on Civil and

Defining the worst forms of child labour

For the purposes of this Convention, the term "the worst forms of child labour" comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

(Article 3, ILO Convention on the Worst Forms of Child Labour, 1999 (No.182). For full text see Appendix 4, page 759.)

Political Rights – includes various provisions relevant to child labour.

The Universal Declaration of Human Rights asserts: "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms" (article 4). Article 8 of the International Covenant on Civil and Political Rights expands on this:

"1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour;
   (b) Paragraph 3(a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
   (c) For the purpose of this paragraph the term 'forced or compulsory labour' shall not include:
      (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
      (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
      (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
      (iv) Any work or service which forms part of normal civil obligations."

Article 23 of the Universal Declaration of Human Rights asserts the right to work:

"1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests."

The International Covenant on Economic, Social and Cultural Rights also asserts in more detail the right to work and to just and favourable conditions of work (articles 6 and 7). Paragraph 3 of article 10 of the Covenant requires "special measures of protection and assistance" for all children and young persons: "Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law."

In a General Comment on the right to education, the Committee on Economic, Social and Cultural Rights emphasizes: "States Parties have an obligation to ensure that communities and families are not dependent on child labour. The Committee especially affirms the importance of education in eliminating child labour and the obligations set out in article 7(2) of the Worst Forms of Child Labour Convention, 1999 (No.182)." (Committee on Economic, Social and Cultural Rights, General Comment No. 13, 1999, HRI/GEN/1/Rev.8, para. 55, p. 82)

In relation to traffic in children and child prostitution, in addition to other articles of the Convention on the Rights of the Child (in particular article 33, page 503, article 34, page 513, and the Optional Protocol on the sale of children, child prostitution and child pornography, page 669), there are various other relevant conventions, including in particular:

- International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children, as amended by the Protocol approved by the General Assembly of the United Nations on 20 October 1947;
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, approved by General Assembly resolution 317(IV) of 2 December 1949 (entered into force on 25 July 1951), requires: (article 1) States to agree to punish "any person who, to gratify the passions of another: 1. Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; 2. Exploits the prostitution of another person, even with the consent of that person";
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 608(XXI) of 30 April 1956 and done at Geneva on 7 September 1956 (entered into force on 30 April 1957), article 1(d): "Any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour."
- United Nations Convention against Transnational Organized Crime, 2000, with its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (see article 35, page 531).

A World Fit for Children – follow-up to 1990 World Summit for Children

In 1990, world leaders committed themselves to "work for special protection of the working child and for the abolition of illegal child labour..." (World Summit for Children, 30 September 1990, World Declaration on the Survival, Protection and Development of Children Declaration, para. 20(7)). Progress since the World Summit for Children was reviewed at the United Nations General Assembly's special session on children in 2002, when new goals were set. States committed themselves to "take immediate and effective measures to eliminate the worst forms of child labour as defined in ILO Convention (No.182), and elaborate and implement strategies for the elimination of child labour that is contrary to accepted international standards" (*A World Fit for Children*, Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, para. 43(d); for details from Plan of Action, see box opposite).

In its 2006 Global Report, *The end of child labour: Within reach*, ILO notes: "Fortunately, development efforts in many countries are now being channelled within the context of various complementary frameworks such as the Millennium Development Goals (MDGs), the Poverty Reduction Strategy Papers (PRSPs) process, the Education For All (EFA) initiative, ILO's Decent Work Agenda and – specific to Africa – the New Partnership for Africa's Development (NEPAD)." ILO perceives mainstreaming child labour concerns in these frameworks as the key strategy to raise the profile of the issue and ensure greater impact.

The Report analyses the links between the Millennium Development Goals and child labour (which is not mentioned explicitly in the goals): "… they tend to run both ways – between poverty reduction (MDG 1) and child labour on the one hand, and education for all (MDG 2) and child labour on the other. But child labour also has a gender equality dimension (MDG 3) in view of the discriminatory practices that deprive many girls of appropriate education and add to their burdens through excessive household chores. Combating HIV/AIDS (MDG 6) also bears on child labour, since children orphaned by AIDS are among the children most at risk, as does the development of a global partnership for development (MDG 8), including the promotion of decent work for youth… The incorporation of child labour into the MDG framework as a target or an indicator for several MDG targets should be an objective

Combating child labour

A World Fit for Children, outcome document of the United Nations General Assembly's special session on children, 2002: extract

In the Plan of Action, States committed themselves to:

"Take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. Provide for the rehabilitation and social integration of children removed from the worst forms of child labour through *inter alia* ensuring access to free basic education and, whenever possible and appropriate, vocational training.

Take appropriate steps to assist one another in the elimination of the worst forms of child labour through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

Elaborate and implement strategies to protect children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

In this context, protect children from all forms of economic exploitation by mobilizing national partnerships and international cooperation, and improve the conditions of children through, *inter alia*, providing working children with free basic education and with vocational training and their integration into the education system in every way possible and encourage support for social and economic policies aimed at poverty eradication and at providing families, particularly women, with employment and income-generating opportunities.

Promote international cooperation to assist developing countries upon request in addressing child labour and its root causes, *inter alia*, through social and economic policies aimed at poverty eradication, while stressing that labour standards should not be used for protectionist trade purposes.

Strengthen the collection and analysis of data on child labour.

Mainstream action relating to child labour into national poverty eradication and development efforts, especially in policies and programmes in the areas of health, education, employment and social protection."

("A World Fit for Children", Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, para. 44 (33 to 39))

article 32

for the worldwide movement, and in particular for the ILO in its drive to promote decent work as a global goal…" (*The end of child labour: Within reach*, Part III, paras. 231, 245 and 246)

The Global Compact

At the World Economic Forum in 1999, the United Nations Secretary-General challenged world business leaders to "embrace and enact" the Global Compact. Among its nine principles are the elimination of all forms of forced or compulsory labour and the effective abolition of child labour (see www.unglobalcompact.org).

Girls and economic exploitation

The Platform for Action of the Fourth World Conference on Women (Beijing, 1995) highlights the particular discriminatory forms of child labour affecting girls. It cites child labour as one of the reasons why, of the 130 million children who in 1990 had no access to primary education, 81 million were girls. Its strategic objective L.6 – "Eliminate the economic exploitation of child labour and protect young girls at work" – promotes the standards in the Convention on the Rights of the Child and ILO Conventions (Report of the Fourth World Conference on Women, September 1995, A/CONF.177/20, Platform for Action, paras. 263 and 282).

The report of the United Nations General Assembly's special session in 2000, following up on the Fourth World Conference on Women, refers to child labour and the heavy burden of domestic responsibilities on girls which has contributed to a lack of opportunities and possibilities for girls to become confident and self-reliant, and independent adults (A/RES/S-23/3, para. 33).

The Committee on the Rights of the Child often takes up the vulnerability of girls to forms of economic exploitation in its examination of States' reports, in particular "worst forms of labour" (see also page 496 below). For example:

"The Committee notes the measures taken by the State Party to prevent girls from being used as domestic servants (petites bonnes) and subjected to economic exploitation and sexual abuse. However, the Committee is concerned by the growing extent of this reality which threatens the health, physical integrity and education of the girl child.
"The Committee recommends that the State Party:
(a) Take all necessary measures to raise awareness on the threats a girl child is facing by being used as a domestic servant;
(b) Enact laws to protect girls from economic exploitation;
(c) Strengthen its efforts to eliminate child labour, in particular by addressing the root causes of child economic exploitation through poverty eradication and access to education;
(d) Take measures to ensure effective implementation of the ILO Conventions No.138 concerning Minimum Age for Admission to Employment and No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which the State Party has ratified; and
(e) Seek technical cooperation from ILO and UNICEF." *(Senegal CRC/C/SEN/CO/2, paras. 60 to 63)*

Children whose liberty is restricted

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty requires that juveniles under arrest or awaiting trial "should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention" (rule 18(b)). In addition, under rule 44: "All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty." Rules 45 and 46 require that juveniles deprived of their liberty should, whenever possible, be provided with the opportunity to perform remunerated work and have the right to an "equitable remuneration".

Reservations and declarations relating to article 32

Few States Parties have made reservations or declarations in relation to article 32. India made a declaration justifying progressive implementation of the article: "While fully subscribing to the objectives and purposes of the Convention, realizing that certain of the rights of the child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international cooperation; recognizing that the child has to be protected from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India; having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India – the Government of India undertakes to take measures to progressively implement the provisions of article 32, particularly paragraph 2(a), in accordance with its national legislation and relevant international instruments to which it is a State Party." (CRC/C/2/Rev.8, p. 25) When it examined India's Initial Report, the Committee encouraged the State to withdraw its declaration as unnecessary and it re-emphasized this when it examined the State's Second Report:

"In the light of the State Party's numerous measures to implement progressively article 32 of the Convention, the Committee has serious doubts as to the need for this declaration.
"In line with its previous recommendations ..., and in the light of the Vienna Declaration and Programme of Action, the Committee urges the State Party to withdraw the declaration made to article 32 of the Convention." *(India CRC/C/15/Add.228, paras. 7 and 8. See below, page 493.)*

New Zealand noted that it considered the rights of the child, provided for in article 32(1), "are adequately protected by its existing law. It therefore reserves the right not to legislate further or to take additional measures as may be envisaged in article 32(2)" (CRC/C/2/Rev.8, p. 34). When it examined New Zealand's Initial Report, the Committee expressed concern at

"... the broad nature of the reservations made by the State Party". *(New Zealand CRC/C/15/Add.71, para. 8)*

It was "very concerned" that the reservation had not been withdrawn when it examined the Second Report and urged New Zealand to:

"Expedite the changes in legislation and administrative procedures necessary for the withdrawal of its general reservation and the reservations to articles 32, paragraph 2 and 37(c)..." *(New Zealand CR/C/15/Add.216, paras. 6 and 7)*

The right of the child to protection from economic exploitation

The first paragraph of article 32 requires States to recognize the right of the child to be protected from economic exploitation and from performing any work which is likely to be hazardous, interfere with the child's education, or be harmful to health or physical, mental, spiritual, moral or social development.

The Committee has not as yet developed a General Comment on article 32, but it has addressed State's obligations in its General Comments No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child" and No. 7 on "Implementing child rights in early childhood" and as follows:

"During adolescence, an increasing number of young people are leaving school to start working to help support their families or for wages in the formal or informal sector. Participation in work activities in accordance with international standards, as long as it does not jeopardize the enjoyment of any of the other rights of adolescents, including health and education, may be beneficial for the development of the adolescent. The Committee urges States Parties to take all necessary measures to abolish all forms of child labour, starting with the worst forms, to continuously review national regulations on minimum ages for employment with a view to making them compatible with international standards, and to regulate the working environment and conditions for adolescents who are working (in accordance with article 32 of the Convention, as well as ILO Conventions Nos. 138 and 182), so as to ensure that they are fully protected and have access to legal redress mechanisms...
"To this end, States Parties must notably fulfil the following obligations: ...
(e) To protect adolescents from all forms of labour which may jeopardize the enjoyment of their rights, notably by abolishing all forms of child labour and by regulating the working environment and conditions in accordance with international standards..." (Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, paras. 18 and 39(e))

"In some countries and regions, children are socialized to work from an early age, including in activities that are potentially hazardous, exploitative and damaging to their health, education and long-term prospects. For example, young children may be initiated into domestic work or agricultural labour, or assist parents or siblings engaged in hazardous activities. Even very young babies may be vulnerable to economic exploitation, as when they are used or hired out for begging. Exploitation of young children in the entertainment industry, including television, film, advertising and other modern media, is also a cause for concern. States Parties have particular responsibilities in relation to extreme forms of hazardous child labour identified in the Worst Forms of Child Labour Convention, 1999 (No.182) of the ILO..." (Committee on the Rights of the Child, General Comment No. 7, 2006, CRC/C/GC/7/Rev.1, para. 36(e))

In its General Comment No. 9 on "The rights of children with disabilities", the Committee emphasizes that children with disabilities are particularly vulnerable to different forms of economic exploitation, including the "worst forms of child labour", as well as drug trafficking and begging. It recommends ratification of ILO Conventions (No.138) and (No.182) and urges States in the implementation of these Conventions to pay special attention to the vulnerability and needs of children with disabilities (CRC/C/GC/9, para. 75).

Day of General Discussion on "Economic exploitation of the child"

The Committee held a Day of General Discussion on the "Economic exploitation of the child" in October 1993. At the conclusion of the General Discussion, the Committee made a public statement and, subsequently, through a working group of its members, framed a set of recommendations (see below). The statement invited financial institutions, including the World Bank and the International Monetary Fund, to a discussion about the need to protect the rights of the child in economic reform programmes and recommended that UNESCO take the lead in an international effort to make school education

"... a real and effective alternative to exploitative child labour, including child prostitution".

The Committee also recommended that all governments

"... ratify promptly the International Labour Organization standards on minimum age and on conditions of employment. These international norms should also be incorporated into national legislation – and be enforced.
"The laws in many countries do not give protection against economic exploitation of children. In other cases, the legislation is consistent with international standards but is not enforced. A system for inspection of work places is needed in each country. Also, the informal sector of the economy should be systematically controlled.

"The cynicism which has made large-scale exploitation of children possible must now be effectively countered. Violations of the rights of working children should be penalized. Child prostitution must be severely criminalized; intermediaries, accomplices and 'clients' should be penalized. Child pornography should be banned." *(Committee on the Rights of the Child, Report on the fourth session, September/October 1993, CRC/C/20, Annex VI, pp. 57 and 58)*

The Committee adopted "Recommendations concerning economic exploitation of children" at its fifth session in January 1994. These emphasized that the holistic approach to the human rights of children, stressed in the Convention on the Rights of the Child and in particular in the general principles of the Convention (articles 2, 3, 6 and 12), should be used as a general framework in which to consider situations of economic exploitation of children. It called for "an adequate legal framework and necessary mechanisms of implementation", as well as periodic assessment and evaluation of progress. The Committee recommended the establishment of a national mechanism for coordinating policies and monitoring the implementation of the Convention, having specific competence in the area of protection from economic exploitation.

Specifically in the area of the protection of the child from economic exploitation, the Committee

"... considers the child as a person who should be given the benefit of respect and solidarity within the family and society;
"(i) In the case of sexual exploitation or exploitation through work, the Committee considers the child as a victim who should be given the benefit of special protection in terms of health, education and development.
"(ii) In any event, the following must be strictly forbidden:

- *Activities jeopardizing the development of the child or contrary to human values and dignity;*
- *Activities involving cruel, inhuman or degrading treatment, the sale of children or situations of servitude;*
- *Activities that are dangerous or harmful to the child's harmonious physical, mental and spiritual development or are liable to jeopardize the future education and training of the child;*
- *Activities involving discrimination, particularly with regard to vulnerable and marginalized social groups;*
- *All activities under the minimum ages referred to in article 32, paragraph 2, of the Convention on the Rights of the Child and in particular those recommended by ILO;*
- *All activities using the child for legally punishable criminal acts, such as trafficking in drugs or prohibited goods.*

"(iii) In accordance with article 32 of the Convention on the Rights of the Child, every child has the right to be protected from economic exploitation. Taking into consideration the best interests of the child, States Parties must formulate standards or revise legislation in force with a view to ensuring the legal protection of the child from any form of exploitation. States Parties are invited to take all legislative, administrative and other measures aimed at ensuring the protection of the child, taking account of all forms of employment, including employment within the family and in the agricultural sector and informal employment.
"(iv) States Parties must also take measures to ensure the rehabilitation of children who, as a result of economic exploitation, are exposed to serious physical and moral danger. It is essential to provide these children with the necessary social and medical assistance and to envisage social reintegration programmes for them in the light of article 39 of the Convention on the Rights of the Child."
(Committee on the Rights of the Child, Report on the fifth session, January 1994, CRC/C/24, pp. 38 to 43)

The Committee's examination of States' reports

The Committee has reflected these general recommendations in its Concluding Observations on States Parties' reports. In cases where there are allegations of forced labour, the Committee has the most serious concern.

(See also comments on sexual exploitation, another form of forced labour: article 34, page 513.)

In many cases, the Committee has expressed more general concern and made a variety of recommendations, referring to ILO Conventions (No.138) and (No.182), and to the possibility of States Parties seeking technical assistance from ILO. For example, in a particularly detailed observation on India's Initial Report:

"The Committee notes that India was the first country to sign a Memorandum of Understanding with the ILO in 1992 to implement the ILO-IPEC programme. The Committee further notes the amendments to schedules A and B of the 1986 Child Labour (Prohibition and Regulation) Act. Nevertheless, the Committee remains concerned at the large numbers of children involved in child labour, including bonded labour, especially in the informal sector, household enterprises, as domestic servants, and in agriculture, many of whom are working in hazardous conditions. The Committee is concerned that minimum age standards for employment are rarely enforced and appropriate penalties and sanctions are

not imposed to ensure that employers comply with the law.
"The Committee encourages the State Party to withdraw its declaration with respect to article 32 of the Convention, as it is unnecessary in the light of the efforts the State Party is making to address child labour. The Committee recommends that the State Party ensure the full implementation of the 1986 Child Labour (Prohibition and Regulation) Act, the 1976 Bonded Labour (System Abolition) Act and the 1993 Employment of Manual Scavengers Act.
"The Committee recommends that the 1986 Child Labour Act be amended so that household enterprises and government schools and training centres are no longer exempt from prohibitions on employing children; and coverage is expanded to include agriculture and other informal sectors. The Factories Act should be amended to cover all factories or workshops employing child labour. The Beedi Act should be amended so that exemptions for household-based production are eliminated. Employers should be required to have and produce on demand proof of age of all children working on their premises.
"The Committee recommends that the State Party ensure that laws provide criminal and civil remedies, especially in the light of decisions of the Supreme Court in relation to compensation funds for child labourers (M.C. Mehta vs. The state of Tamil Nadu and M.C. Mehta vs. Union of India). The Committee recommends that court procedures be simplified, so that responses are appropriate, timely and child-friendly; and to vigorously pursue enforcement of minimum-age standards.
"The Committee recommends that the State Party encourage states and districts to establish and oversee child labour vigilance committees, and ensure that a sufficient number of labour inspectors are adequately resourced to carry out their work effectively. A national mechanism to monitor the implementation of standards at state and local levels should be established and empowered to receive and address complaints of violations, and to file First Information Reports.
"The Committee recommends that the State Party undertake a national study on the nature and extent of child labour, and that disaggregated data, including violations, be compiled and kept up to date to serve as a basis for designing measures and evaluating progress. The Committee further recommends that the State Party continue its efforts to carry out campaigns to inform and sensitize the general public, especially parents and children, of work hazards; and to involve and train employers', workers' and civic organizations, government officials, such as labour inspectors and law enforcement officials, and other relevant professionals.
"The Committee calls upon the State Party to ensure that the competent authorities cooperate and coordinate their activities, including with respect to education and rehabilitation programmes; and that present cooperation between the State Party and relevant United Nations agencies, such as ILO and UNICEF, and NGOs be expanded. The Committee recommends that the State Party ratify ILO Convention No.138 concerning the Minimum Age for Admission to Employment, and No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour." *(India CRC/C/15/Add.115, paras. 65 to 71)*

It followed this up when it examined India's Second Report:

"The Committee notes the tenth Plan for the National Child Labour Project but is extremely concerned at the large numbers of children involved in economic exploitation, many of whom are working in hazardous conditions, including as bonded labourers, especially in the informal sector, in household enterprises, as domestic servants and in agriculture. The Committee is further very concerned that minimum age standards for employment are rarely enforced and appropriate penalties and sanctions are not imposed to ensure that employers comply with the law.

"The Committee recommends that the State Party:
(a) Ensure the full implementation of the Child Labour (Prohibition and Regulation) Act, 1986, the Bonded Labour (System Abolition) Act, 1976 and the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993;
(b) Amend the Child Labour Act, 1986 so that household enterprises and government schools and training centres are no longer exempt from prohibitions on employing children;
(c) Promote community-based programmes for the prevention of child labour;
(d) Ratify ILO Conventions No.138 concerning the Minimum Age for Admission to Employment, and No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;
(e) Strengthen its efforts to raise awareness of the public at large, especially parents and children, of work hazards and to involve and train employers, workers and civic organizations, government officials, such as labour inspectors and law enforcement officials, and other relevant professionals; and
(f) Continue its collaboration with the International Programme on the Elimination of Child Labour of the International Labour Organization (ILO/IPEC)." *(India CRC/C/15/Add.228, paras. 72 and 73)*

The Committee told Benin:

"The Committee is deeply concerned at the prevalence of child labour among young children under the age of 14, at the traditional practice of domestic servants or vidomégons, and at the increased number of children working in the informal sector.
"The Committee urges the State Party to:
(a) Undertake surveys throughout the territory with a view to establishing, inter alia, *the number of working children, their age, occupations, the number of working hours and the remuneration received;*
(b) Strictly enforce provisions of the Labour Code pertaining to children, combined with information on legislation regarding child labour and the creation of appropriate educational opportunities for children;
(c) Strengthen community-based mechanisms to prevent and monitor internal child trafficking and economic exploitation, in particular in the informal sector, and, at the same time, undertake preventive actions to improve living conditions and economic opportunities for families, in the rural areas as well as high-risk zones paying particular attention to less privileged families; and
(d) Continue to cooperate with the International Programme on the Elimination of Child Labour of the International Labour Organization (ILO/IPEC)." (Benin CRC/C/BEN/CO/2, paras. 67 and 68)

The Committee's recommendations cover the need for detailed studies and monitoring, legislative reform, information campaigns, complaints procedures, enforcement, and rehabilitation of child workers. It has often highlighted particular sectors or types of employment. For example:

"The Committee... further suggests that the authorities adopt explicit legislation and measures to protect children from exploitation through child labour in the informal sector." (Ghana CRC/C/15/Add.73, para. 45)

It followed this up more broadly when it examined Ghana's Second Report:

"The Committee is deeply concerned about the high number of children engaged in economic activities and that a high percentage of this group are involved in work that is hazardous, dangerous and jeopardizes their health, education and development.
"The Committee urges the State Party to strengthen the capacity of the institutions responsible for the control and protection of the rights of working children, including the Child Labour Unit and the Inspectorate Division Unit. It further recommends that the State Party, with the support of the International Labour Organization (ILO), UNICEF, and national and international NGOs, develop a comprehensive programme to prevent and combat child labour, in full compliance with ILO Convention No.182 which the State Party has ratified. The Committee also encourages the State Party to ratify ILO Convention No.138 concerning the Minimum Age for Admission to Employment." (Ghana CRC/C/GHA/CO/2, paras. 65 and 66)

The Committee challenged exploitation of children as jockeys in Mongolia:

"... the Committee is concerned at the hazardous situation of children increasingly involved and exploited in traditional horse racing, which has undergone considerable changes from traditional sports to profitable businesses with child-abusive and exploitative features. In particular, it is concerned that children, sometimes as young as eight years old, are involved and that such involvement can generate serious injuries, even fatalities."

It urged Mongolia:

"... To address the issue of child jockeys in traditional horse racing by undertaking a comprehensive study to assess the nature and extent of exploitation of children in the horse-racing business and by explicitly prohibiting the employment of children under the age of 16 as jockeys in these races in line with the minimum age for work set in the labour law;..." (Mongolia CRC/C/15/Add.264, paras. 60 and 61)

The Committee raised involvement of children in cotton harvesting in Uzbekistan:

"... the Committee is deeply concerned at the information about the involvement of the very many school-aged children in the harvesting of cotton, which results in serious health problems such as intestinal and respiratory infections, meningitis and hepatitis.
"The Committee urges the State Party:
(a) To take all necessary measures to ensure that the involvement of school-aged children in the cotton harvesting is in full compliance with the international child labour standards, inter alia *in terms of their age, their working hours, their working conditions, their education and their health;*
(b) To ensure regular inspection of the harvesting practice to monitor and guarantee full compliance with international child labour standards;
(c) To establish control mechanisms to monitor the extent of all other forms of child labour, including unregulated work; address its causes with a view to enhancing prevention; and, where children are legally employed, ensure that their work is not exploitative and is in accordance with international standards;..." (Uzbekistan CRC/C/UZB/CO/2, paras. 64 and 65)

Providing "a minimum age or minimum ages for admission to employment"

Article 32(2)(a) of the Convention requires that a minimum age, or minimum ages, for employment must be set; it does not prescribe any particular ages. But the Committee has indicated that such ages should be established in the light of other international instruments, and in particular ILO Convention (No.138) (see full text in Appendix 4, page 729).

Basically, the ILO Convention requires:

- a commitment "to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons" (article 1);
- a minimum age for any employment not less than the age of completion of compulsory schooling and in any event not less than 15 (article 2); and
- a minimum age of 18 "for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons" (article 3).

But in relation to these minimum ages, the Convention allows certain limited exceptions and flexibilities. In relation to the minimum age for any employment or work:

- where the economy and educational facilities are insufficiently developed, a Member State may, provided it has consulted with organizations of workers and employers concerned, initially specify a minimum age of 14 years (article 2);
- members that ratify may also list, after consultation, limited categories of work or employment – as long as not hazardous – "in respect of which special and substantial problems of application arise", which are excluded from application of the Convention (article 4);
- members may initially limit the overall application of the Convention to selected branches of economic activity or types of undertakings to which it will be applied, by specifying these in a declaration when ratifying the Convention. The Convention, however, must be applied as a minimum to: "mining and quarrying, manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers" (article 5);
- excluded from the Convention is work done in schools or other training institutions for general, vocational or technical education, or by persons at least 14 years of age in undertakings (i.e., apprenticeship with the minimum age of 14 years) under specified conditions (article 6);
- national laws or regulations may permit light work by 13- to 15-year-olds (or 12 to 14 initially), which is not likely to be harmful to their health or development, and does not prejudice their attendance at school or in vocational or training programmes, "or their capacity to benefit from the instruction received" (article 7);
- national laws or regulations may permit employment or work by young people who are at least 15 (or 14 initially) but have not completed their compulsory schooling, provided they meet the above conditions, and the hours and conditions of employment or work are specified (article 7);
- also, after consultation, the competent authority may, by permits granted in individual cases, allow exceptions "for such purposes as participation in artistic performances"; the permits must limit hours and prescribe conditions (article 8).

In relation to hazardous work, members may, after consultation, authorize an exceptional engagement in hazardous work as from the age of 16 "on condition that the health and morals of the young persons concerned are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity" (article 3).

The Committee on the Rights of the Child has consistently referred to the standards set by ILO Convention (No.138) in relation to minimum ages for employment or work, and also on occasion to the proposals in ILO Recommendation (No.146) (which calls on States to take as their objective the progressive raising to 16 of the minimum age of employment) and to other ILO Conventions. It has congratulated States which have already ratified Convention (No.138) and urged many others to do so. It has emphasized the importance of proof of age being required. For example:

"The Committee recommends that the State Party ensure that the minimum age

for admission to employment is enforced. Employers should be required to have and produce on demand proof of age of all children working on their premises. A national mechanism to monitor the implementation of standards at state and local levels should be established and empowered to receive and address complaints of violations." (Armenia CRC/C/15/Add.119, para. 51)

It followed this up when it examined Armenia's Second Report, expressing satisfaction that Armenia intended to ratify ILO Conventions (No.138) and (No.182), following the adoption of a new Labour Code:

"The Committee recommends that the State Party ensure the effective implementation of the minimum age for admission to employment, set at age 16 in the Labour Code, and of other provisions prohibiting heavy and hazardous work for children under 18. Employers should be required to have and produce on demand proof of age of all children working on their premises. A national mechanism to monitor the implementation of standards at state and local levels should be established and empowered to receive and address complaints of violations. The Committee recommends that the State Party undertake a national survey on the nature and extent of child labour. The Committee recommends that the State Party carry out campaigns to inform and sensitize the general public, especially parents and children, of work hazards; and to involve and train employers', workers' and civic organizations, government officials, such as labour inspectors and law enforcement officials, and other relevant professionals. The State Party should seek cooperation with relevant United Nations agencies, such as ILO and UNICEF, and NGOs in this regard…" (Armenia CRC/C/15/Add.225, para. 61)

Work and education

Paragraph 1 of article 32 requires protection of the child from performing any work that is likely to "interfere with the child's education". As indicated above, in its general recommendations on economic exploitation the Committee has highlighted the interconnection between the right to education, guaranteed by article 28 (see page 407), and exploitation in child labour. In addition, article 28 requires States to "Take measures to encourage regular attendance at schools and the reduction of drop-out rates" – for example by introducing more relevant curricula or providing grants to poor families (see article 28, page 426). The Worst Forms of Child Labour Convention, 1999 (No.182) notes the importance of free basic education in its Preamble and requires ratifying States to ensure access to free basic education for all children removed from the "worst forms of child labour".

The Committee has indicated that some flexibility is permitted regarding "seasonal" work. During discussions with Egyptian Government representatives, a Committee member said: "It was not an intention of the Convention or the ILO Conventions to prevent children from supporting their families by doing domestic chores or helping with the harvest. But two clear aims were to ensure that all children received at least primary education and were not required to do physically or mentally hazardous work." (Egypt CRC/C/SR.68, para. 44)

In its examination of States Parties' reports, the Committee has highlighted any differences between the age for the completion of compulsory schooling and the age for admission to employment, and has proposed that they should be equalized.

Providing "appropriate regulation of the hours and conditions of employment"

Article 32 requires detailed regulation in those instances in which children are permitted to work: above the minimum ages and where the work is not likely to be hazardous, interfere with the child's education or be harmful to the child's health or physical, mental, spiritual, moral or social development. ILO Convention (No.138) indicates the exceptions permitted and also requires that hours of work and conditions be prescribed. There are also various ILO Conventions protecting children from working at night (see box, page 482; see also child's right to rest and leisure, article 31, page 470).

One important issue not dealt with explicitly in the Convention on the Rights of the Child is that of medical examinations for working children. ILO Conventions (No.77), (No.78) and (No.124) provide for a thorough medical examination to determine fitness for employment prior to engagement and also continued medical supervision until the age of 18; such examinations "shall not involve the child or young person, or his parents, in any expense".

Violence against children in the workplace

The Committee has become increasingly concerned at the extent of violence against children in the workplace (and the "worst forms" of child labour constitute violence in themselves). In General Comment No. 8 on "The right of the child to protection from corporal punishment and

other cruel or degrading forms of punishment", the Committee notes that these forms of punishment are used in situations of child labour, including in the domestic context:

"The Committee emphasizes that it is essential that the prohibition of corporal punishment and other cruel or degrading forms of punishment must be enforced in any situations in which children are working."

It proposes that the prohibition of corporal punishment should be explicit in employment law *(General Comment No. 8, 2006, CRC/C/GC/8, paras. 35 and 36).*

The Report of the United Nations Secretary-General's Study on Violence Against Children, submitted to the General Assembly in 2006, indicates that there is little information on violence against child workers, especially those in the informal sector: "Across all regions, violence – physical, sexual and psychological – affects many millions of children who are working, both legally and illegally. It may be used to coerce children to work, or punish or control them within the workplace. Some categories of illegal work have been identified as the 'worst forms of child labour' and therefore constitute violence against children…

"Information on acts of workplace violence against children suggests that most cases are inflicted by 'employers', although perpetrators may also include co-workers, clients, foremen, customers, police, criminal gangs and, in the case of sexual exploitation, pimps.

"The largest employment category for girls under 16 is domestic work which often takes the form of unregulated employment and exploitation, and sometimes servitude or slavery. Several countries have designated it a 'worst form' of child labour under ILO Convention No.182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. Child workers report maltreatment such as physical punishment, humiliation and sexual harassment, and child domestic workers report being consistently humiliated. Most physical and psychological violence against child domestic workers is perpetrated by women (generally employers), but girls are often subject to sexual violence from male members of the family of their employer.

"The exploitation of children under 18 in prostitution, child pornography and similar activities constitutes violence. It is estimated that 1 million children enter these sectors every year. Many are coerced, kidnapped, sold and deceived into these activities, or are victims of trafficking. In addition to the sexual violence which is intrinsic to child prostitution, girls and boys in prostitution and related areas frequently suffer physical and psychological violence, as well as neglect. They are often unable to seek help, and when they do so may be treated as criminals, deprived of liberty and provided with limited redress.

"Bonded labour of children is a feature of many parts of the world. Children in forced and bonded labour are rarely able to protect themselves from employers and other workers, and studies and children's testimonies suggest that all forms of violence are endemic in forced and bonded labour. Violence also affects the tens of thousands of children in traditional forms of slavery, which still exist in some parts of the world." (Report of the independent expert for the United Nations study on violence against children, General Assembly, sixty-first session, August 2006, A/61/299, paras. 64 to 68)

The Report's key recommendations in relation to workplace violence urge States to:

"(a) Implement domestic labour laws, mainstream the elimination of child labour into national development policies and give priority to eliminating the 'worst forms' of child labour, which are inherently violent. Particular attention should be paid to economic exploitation of children in the informal sector, for example, agriculture, fishing and domestic service, where the phenomenon is more prevalent. In addition, States should ensure that child workers participate in discussions about the solutions to this problem;

(b) Where children are working legally (i.e., in conformity with international conventions), create and implement regulatory regimes and inspection processes that explicitly include violence prevention programmes, reporting systems and complaints procedures;

(c) Where children are working illegally, ensure the availability of recovery and integration programmes that focus on assisting under-age children and those in 'worst forms' of labour to leave work, receive education and training, and improve their life chances without further victimization;

(d) Enlist the support of the private sector, trade unions and civil society to form partnerships that stimulate corporate social responsibility measures, and encourage the private sector, trade unions and civil society to adopt ethical guidelines in support of prevention programming in the workplace." (A/61/299, para.113; for summary of overarching recommendations of the report, see article 19, page 251.)

Providing "appropriate penalties or other sanctions to ensure the effective enforcement of the present article"

ILO Convention (No.138) requires that "all necessary measures, including the provision of appropriate penalties" must be taken by the competent authority to ensure effective enforcement. National laws or regulations or a competent authority must also define who is responsible for compliance with the Convention, and what registers or other documents must be kept, recording names and dates of birth ("duly certified wherever possible") of all under-18-year-olds employed or in work (article 9).

The Committee has proposed various components of "effective enforcement" as required by article 32(2)(c), including a labour inspectorate, complaints procedure (see also article 12, page 158), and adequate penalties in cases of non-compliance. These should cover all forms of employment and work, including in the informal sector. For example:

"The Committee recommends that the Labour Law be amended to ensure that children working in family enterprises, agricultural activities and as domestic labour are protected and that inspections extend to these areas. Employers should be required to have, and produce on demand, proof of age of all children working on their premises and the State Party should vigorously pursue enforcement of minimum age standards." (Jordan CRC/C/15/Add.125, para. 58)

It pursued this following examination of Jordan's Third Report:

"In accordance with article 32 of the Convention, the Committee recommends that the State Party:
(a) Continue to take effective measures to prohibit economic exploitation of children, in particular in the informal sector where the phenomenon is more prevalent, for example, by reviewing and amending the provisions of the Labour Code in order to protect children from economic exploitation through labour in the informal sector, including family enterprises, agricultural activities and domestic labour;
(b) Vigorously pursue enforcement of minimum age standards, including requiring employers to have, and to produce on demand, proof of age of all children working on their premises;
(c) Provide the labour inspectors with all the necessary support, including child labour expertise, with a view to enabling them to monitor effectively at the state and local level the implementation of labour law standards and to receive and address complaints of violations; and
(d) Continue to seek technical assistance from ILO/IPEC." (Jordan CRC/C/JOR/CO/3, para. 89)

The Committee is also emphatic that children who do work legally must be appropriately protected, urging the Solomon Islands to

"... Make every effort, including preventive measures, to ensure that those children who do work, in accordance with international standards, do not work under conditions which are harmful to them, that they benefit from appropriate wages and other work-related benefits and that they can continue to have access to formal education;..." (Solomon Islands CRC/C/15/Add.208, para. 53)

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

article 32

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 32, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 32 is particularly relevant to **departments of employment, industry, agriculture, social welfare, education**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 32 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 32 likely to include the training of **all those responsible for inspection and enforcing employment legislation, teachers and social workers, and parenting education**)?

• Specific issues in implementing article 32

Has the State launched or promoted information campaigns

- ☐ for children themselves on the measures of protection they can benefit from and the risks involved in situations of economic exploitation?
- ☐ for the public, including training activities for professional groups working with or for children, to help achieve effective protection of children against economic exploitation?
- ☐ for employers and potential employers?

Does legislation, policy and practice in the State protect children from

- ☐ economic exploitation?

  performing any work which

  - ☐ is hazardous?
  - ☐ interferes with the child's education?
  - ☐ is harmful to the child's health or physical, mental, spiritual, moral or social development?

How to use the checklist, *see page XIX*

article 32

- ☐ involves cruel, inhuman or degrading treatment, the sale of children or servitude?
- ☐ involves activities in which the child is used for legally punishable criminal acts, such as trafficking in drugs or prohibited goods?
- ☐ is incompatible with the realization of other rights in the Convention?

Has the State

- ☐ ratified the ILO's Worst Forms of Child Labour Convention, 1999 (No.182)?
- ☐ ratified the ILO's Minimum Age Convention, 1973 (No.138)?
- ☐ ratified the ILO's Forced Labour Convention, 1930 (No.29)?
- ☐ considered the implications for law, policy and practice of ILO's Minimum Age Recommendation (No.146) and Worst Forms of Child Labour Recommendation (No. 190)?

☐ If not, is the State considering these actions?

☐ Has the State defined in legislation a minimum age for employment that is equal to the age of completion of compulsory education and not less than 15?

☐ Has the State considered adjusting the periods of compulsory education with any seasonal patterns of work for families?

☐ Has the State defined in legislation 18 as the minimum age for admission to any type of employment or work that by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons?

☐ Has the State defined in legislation or by the decision of a competent authority the types of employment or work to which this minimum age of 18 applies?

Has the State defined in legislation limited exemptions

- ☐ prescribing the conditions under which children are allowed to do work in schools or other training institutions for general, vocational or technical education?
- ☐ enabling those aged 14 and over to do work as an integral part of a course of education or training (consistent with the conditions set out in article 6 of ILO Convention No.138)?
- ☐ defining any forms of "light work" which 13- to 15-year-olds are permitted to perform, which are not likely to be harmful to health or development or prejudice their education?
- ☐ defining hours and conditions for employment or work, if permitted, for those who are at least 15 but have not completed compulsory schooling?
- ☐ allowing limited employment or work for such purposes as participation in artistic performances, through a system of permits granted in individual cases (as set out in article 8 of ILO Convention No.138)?
- ☐ defining hours and conditions for employment of children in all cases in which employment or work is permitted?

☐ Has the State ensured adequate arrangements for medical examinations in connection with child employment?

How to use the checklist, *see page XIX*

In relation to effective enforcement of its legislation on child labour, has the State ensured through legislation and otherwise:

- ☐ adequate inspection of situations of work or employment?
- ☐ that employers are required to have and produce on demand proof of age of all children under 18 working for them?
- ☐ adequate access for children to effective complaints procedures?
- ☐ appropriate penalties or other sanctions for non-compliance?
- ☐ adequate record-keeping and reporting in relation to any employment of children?
- ☐ the collection of adequate disaggregated data?
- ☐ that the persons responsible for compliance with provisions concerning child labour are defined?

☐ Are appropriate measures taken to reintegrate and rehabilitate victims of child labour, in particular its worst forms?

Reminder: **The Convention is indivisible and its articles interdependent. Article 32 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 32 include:

Article 15: freedom of association (trade unions)
Article 27: adequate standard of living
Article 28: right to education
Article 31: right to leisure, play and recreation
Article 33: illicit production and trafficking in drugs
Article 34: sexual exploitation
Article 35: sale, trafficking and abduction
Article 36: other forms of harmful exploitation
Article 39: rehabilitative care for child victims
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

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Children and drug abuse

Text of Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 33 requires ratifying States to take all appropriate measures to protect children from the illicit use of narcotic or psychotropic substances as defined in the relevant international treaties and to prevent the use of children in the production or trafficking of such drugs. International treaties have identified scores of drugs and substances which require control, within the following broad groupings:

- Opiates (for example opium, heroin, morphine);
- coca leaves products (for example cocaine and 'crack' cocaine);
- cannabis products (marijuana);
- Amphetamine-type stimulants (stimulant drugs such as amphetamines, methamphetamines, ecstasy);
- any other psychotropic/psychoactive drug capable of producing a state of dependence or the abuse of which could lead to social and public health problems warranting international control (sedatives such as barbiturates, hallucinogens such as LSD).

The main international treaties on these drugs are the Single Convention on Narcotic Drugs (1961) as amended by the 1972 Protocol, and the Convention on Psychotropic Substances (1971).

In addition there are drugs used by children that can alter their state of mind, be prejudicial to health or can be addictive, such as alcohol, tobacco and solvents, but that are not controlled by international treaties, though their use by children in many States is "illicit". The measures to be taken by the State include legislative, administrative, social and educational ones. The emphasis of article 33 is on protection and prevention and it must be read in the context of the whole Convention. ■

Summary

Background

In the post-war decades, children's involvement in illicit drugs was not a significant concern so the issue did not figure in the declarations and conventions of that era. Today, drug abuse by children and young people is causing alarm worldwide because such abuse threatens both the child's development and nations' prosperity and social order.

The issue is now high on most political agendas. In the first decade and a half since the Convention came into force, many States have reported to the Committee that the number of children abusing drugs is rising inexorably.

A Political Declaration was adopted at a General Assembly special session on the world drug problem (1998) which declared the intention of Member States to "give particular attention to demand reduction, notably by investing in and working with youth through formal and informal education, information activities and other preventive measures" (General Assembly, twentieth special session, 10 June 1998, A/RES/S-20/2, para. 6).

The Declaration on the Guiding Principles of Drug Demand Reduction adopted during the same special session calls for systematic action plans and identifies youth as a group in need of special attention, and invites countries to establish networks that facilitate the participation of young people in the design and implementation of youth drug-reduction programmes (General Assembly, twentieth special session, 10 June 1998, A/RES/S-20/3).

The outcome document of the General Assembly's special session on children in 2002 undertook that States would: "Urge the continued development and implementation of programmes for children, including adolescents, especially in schools, to prevent/discourage the use of tobacco and alcohol; detect, counter and prevent trafficking, and the use of narcotic drugs and psychotropic substances except for medical purposes, by, *inter alia*, promoting mass media information campaigns on their harmful effects as well as the risk of addiction and taking necessary actions to deal with the root causes." (Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, para. 11)

Examples of the essential elements for anti-drug programmes for children were provided in a detailed analysis of the phenomenon by the Commission on Narcotic Drugs in a report to the United Nations Economic and Social Council in 2001. This reiterates the recommended strategies of the United Nations Office of Drugs and Crime (previously United Nations Drug Control Programme, UNDCP). (Commission on Narcotic Drugs, *World situation with regard to drug abuse, in particular among children and youth*, E/CN.7/2001/4, 6 December 2000. See box opposite.)

The threat to children

Drug use in the adult population is damaging enough; but when children take drugs they may irreversibly harm their mental or physical growth and States must therefore take all appropriate measures to protect children from their use.

The drugs that children are particularly liable to use are the cheaper ones, so their prevalence depends in part on geography – cannabis (marijuana) appears in most countries, coca paste in South America, opium in Asia, and so forth. In addition, amphetamine-type stimulants such as ecstasy are popular with young people in Europe and North America, and methamphetamines with young people in certain countries in East and South-East Asia (in part because these drugs are not associated with social exclusion or addiction, but rather with the party and dancing scene).

Moreover, children in almost all countries are found to be illicitly obtaining and using alcohol and tobacco and abusing solvents, none of which is covered by international treaties. Alcohol is used in many societies and tobacco in all, even though they can be extremely prejudicial to health and addictive. Solvents are widely perceived as being the drug of childhood. Glue sniffing (the shorthand term for solvent abuse) is particularly noted as a habit of children living and working on the streets – a quick, cheap route to oblivion. Solvent abuse carries an added problem that the sale or possession of solvents, used as an ingredient in a vast range of products, is hard to regulate. The Committee has additionally drawn attention to drugs which are not recognized by the local culture as harmful, such as medicines or mild narcotics, but which should not be given to children.

Sometimes the Committee has drawn attention to drugs which are not recognized by the society as harmful – for example quat consumption in Yemen, alcohol and tobacco in Spain or the use of drugs to control hyperactivity in Finland:

"The Committee recommends that the State Party consider quat as a dangerous substance and take all necessary measures to raise awareness on the risks of its consumption and to prohibit access to it by children." (Yemen CRC/C/15/Add.267, para. 70)

Essential elements to be taken into consideration when designing drug prevention, treatment and rehabilitation programmes for youth

"(a) Youth are not homogeneous and they are not all equally vulnerable. Strategies should be carefully tailored to clearly defined populations and programmes need to target particular youth cultures and youth settings.

(b) Programmes should be based on evidence of what works and does not work in specific settings and/or with specific target groups. They should in turn include a strong monitoring and evaluation component to contribute to the body of evidence.

(c) Prevention programmes should include a range of activities addressing a range of risk and protective factors. These could include the provision of scientifically based, non-exaggerated information about drugs, their effects and the real prevalence of use among peers; personal and social skills; a caring and health-promoting family environment; fun, challenging and constructive recreational activities; an adequate level of education and employment; and, youth-friendly health and social services.

(c) The early identification of drug abuse and early intervention is essential to prevent youth to progress from occasional to dependent or more harmful forms of drug abuse.

(d) Treatment and rehabilitation services for children and young people should pay particular attention to assessing the specific child situation and needs, involving and supporting families in the therapeuic process, using individual and group-based interventions, the provision of educational, vocational training and employment opportunities, and the connection to pro-social mentors and peers.

(e) Young people are a key resource for making a difference in drug abuse and they should be given the chance to express their views, which in turn should be taken seriously. Youth should be involved in all stages of the development of prevention programmes. Also, there is strong indication that involving young people as prevention agents in peer-led initiatives can have good results.

(f) Programmes should not focus on one drug only, but it should address, within the wider concept of health promotion, substance abuse in general, including that of tobacco, alcohol and inhalants.

(g) Programmes should be developed and implemented through collaborative efforts involving all sectors in the community, including both governmental and non-governmental. At a wider level, networks of experts and practitioners need to be established and maintained to ensure cross fertilization and continuous improvements.

(h) Substance abuse behaviours usually change very slowly. Thus prevention programmes need to be sustained over a long period of time to be effective."

(United Nations Office of Drugs and Crime, January 2007)

article 33

"The Committee notes with concern … the fact that consumption of alcohol and tobacco is socially accepted and not perceived as a risk." *(Spain CRC/C/15/Add.185, para. 38)*

"The Committee is also concerned at the information that Attention Deficit Hyperactivity Disorder (ADHD) and Attention Deficit Disorder (ADD) are being misdiagnosed and that psycho-stimulant drugs are therefore being overprescribed, despite the growing evidence of the harmful effects of these drugs. "The Committee recommends that further research be undertaken on the diagnosis and treatment of ADHD and ADD, including the possible negative effects of psycho stimulants on the physical and psychological well-being of children, and that other forms of management and treatment be used as much as possible to address these behavioural disorders." *(Finland CRC/C/15/Add.272, paras. 38 and 39)*

Illicit drug use is also associated with criminality. Children who take drugs may often play a minor role in their production and traffic, and they may

involve themselves in other crimes and forms of exploitation.

At its 87th session in 1999, the General Conference of the International Labour Organization adopted the Worst Forms of Child Labour Convention (No.182). For the purposes of this Convention, the term "worst forms of child labour" includes:

"... (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties..." (see Appendix 4, page 759.)

The Committee has expressed deep concern to States where children are employed in the drugs trade, such as Colombia:

"The Committee is... seriously concerned over the manufacture in, and exportation of drugs from, Colombia which affects children who are pickers of coca leaves (raspachines), *as well as children forced or lured into trafficking drugs, including within their bodies* (mulas)*."* *(Colombia CRC/C/COL/CO/3, para. 88)*

Or where children are drawn into criminal activities in order to feed their drug habits:

"While acknowledging the efforts made by the State Party to combat drug abuse, trafficking and drug-related violence, the Committee remains concerned at the high incidence of substance abuse by children in Nigeria, including the use of cannabis, psychotropic substances, heroin, cocaine and volatile organic solvents, as well as abuse of local plants. The Committee is also concerned by the reports of the increasing involvement of young people in drug-related crimes." (Nigeria CRC/C/15/Add.257, para. 67)

The obligation under article 33 to "protect children from the illicit use of drugs..." also includes protecting children from the effects of drug abuse by adults. Pregnant women dependent on drugs may, for example, have babies with consequent physical or intellectual disabilities or have newborns experiencing abstinence syndromes. Drug abuse by parents or other family members may also result in children being neglected or harmed. The Committee's General Comment No. 7 on "Implementing child rights in early childhood", documents this aspect of drug abuse:

"While very young children are only rarely likely to be substance abusers, they may require specialist health care if born to alcohol- or drug-addicted mothers, and protection where family members are abusers and they are at risk of exposure to drugs. They may also suffer adverse consequences of alcohol or drug abuse on family living standards and quality of care, as well as being at risk of early initiation into substance abuse..." (Committee on the Rights of the Child, General Comment No 7, 2005, CRC/C/GC/7/Rev.1, para. 36)

And the Committee has raised the matter with some States, for example Norway:

"The Committee notes with concern the high number of children who consume drugs and alcohol in the State Party. The Committee is also concerned about the large number of children who suffer as a result of their parents' drug abuse..." (Norway CRC/C/15/Add.263, para. 43)

The Committee has urged many countries to take systematic action to protect children from drugs, including developing action plans in cooperation with the United Nations Office of Drugs and Crime (UNODC) (previously the United Nations Drug Control Programme, UNDCP) and other international organizations, for example to Armenia:

"The Committee recommends that the State Party develop a national drug control plan, or a Master Plan, with the guidance of the United Nations Drug Control Programme (UNDCP)... The Committee recommends cooperation with and assistance from WHO and UNICEF." (Armenia CRC/C/15/Add.225, para. 63)

Understanding drug abuse

The problem of drug abuse by children is peculiarly alarming to the adult world because we cannot accurately map it and we do not know how best to tackle it: simply making its production and sale illegal is clearly not enough.

Nothing can be done about the problem without understanding it, and clearly drug abuse by children merits a high priority for research, both to describe the problem and to identify effective remedies. These include the identification of protective and risk factors and the evaluation of positive interventions. There will be differences between strategies aimed at children from communities where drugs are a significant part of the economy and those from communities where drug consumption is the problem; but in both the perceptions of the young people themselves are vital. States are asked to report on drug abuse prevention, treatment and rehabilitation activities to UNODC, and the Committee strongly encourages States to review and analyse the phenomenon.

UNODC comments: "Quantitative data on drug abuse among young people are available in many countries, although not easily comparable due to the use of different methodologies, age breakdowns etc. What is really missing,

however, is systematic qualitative information about how young people perceive drugs and why they use drugs. Such information is indispensable for the understanding of the root causes of the high prevalence of drug use and the design of effective prevention programmes. In collecting information the UNDCP is making sure that young people themselves participate in the process of collection, analysis and discussion of the information." (Review of the Achievements of the Plan of Action of the World Summit for Children and Consideration of Future Action, UNDCP, 2001, A/AC.256/CRP.8, para. 1) The Committee has reflected this advice in its recommendations, for example:

"The Committee recommends… that the State Party:
(a) formulate a rights-based plan of action for the protection of all children and particularly adolescents from the dangers of drugs and harmful substances, and involve children in its formulation and implementation;
(b) provide children with accurate and objective information about the harmful consequences of substance abuse…" *(Kiribati CRC/C/KIR/CO/1, para. 48)*

"Legislative and administrative" measures against drugs

The ILO has identified involvement in drugs as one of the worst forms of child labour (see above). Most forms of drug production or trafficking are usually already illegal, but countries can increase sentences on convicted adults if they involve children in these activities. Similarly, criminal codes could ensure that the selling or distribution of drugs to children is treated as a more serious offence. Not only are children more vulnerable than adults, there is evidence that dealers deliberately target them, for example by giving them free samples, as the Committee noted in Albania:

"The Committee is concerned at the increase in drug abuse, in particular among young children, including through the free distribution of drugs by drug dealers with the aim of luring children into drug use, which may occur also in school environments." *(Albania CRC/C/15/Add.249, para. 74)*

Legal measures are also needed to deter the access by children to solvents – for example by attaching criminal penalties to the sale of solvents to children without authorization by parents or others.

Tobacco and alcohol use by children can also be reduced by legislative measures, such as bans on the sale of alcohol or cigarettes to children, or by regulating how they are marketed, for example by prohibiting alcoholic drinks targeted at a teenage market or the advertising of tobacco or alcohol in general.

In its General Comment No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child", the Committee recommends that States regulate the marketing of unhealthy products to children:

"The Committee is concerned about the influence exerted on adolescent health behaviours by the marketing of unhealthy products and lifestyles. In line with article 17 of the Convention, States Parties are urged to protect adolescents from information that is harmful to their health and development, while underscoring their right to information and material from diverse national and international sources. States Parties are therefore urged to regulate or prohibit information on and marketing of substances such as alcohol and tobacco, particularly when it targets children and adolescents." *(Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, para. 25)*

The Committee often recommends legal reform to reporting States. For example, it told Nepal:

"The Committee expresses concern at the widespread prevalence of alcohol consumption by children, as well as the growing incidence of substance abuse by children, including the use of cannabis, heroin, opiates and intravenous drug use. The Committee is also concerned about the harmful effects of alcohol and substance consumption by parents on the physical, emotional and psychological development and well-being of children in the State Party. While noting that the Alcohol Act prohibits the selling of alcohol to children aged 16 years or below, the Committee expresses concern that the Act carries no penalty in case of violation, and that legislation prohibiting the use of alcohol by minors is generally ineffectively implemented. It is also concerned at the absence of specific legislation prohibiting sale, use and trafficking of controlled substances by children, and also of treatment programmes in this regard.
"The Committee recommends that the State Party take initiatives to combat drug and alcohol abuse by children, including through public education awareness campaigns and ensure that children who abuse alcohol and/or use drugs and other harmful substances have access to effective structures and procedures for treatment, counselling, recovery and reintegration. The Committee further recommends that parents are educated, through, inter alia, *awareness-raising campaigns, on the harmful effects of parents' use of alcohol and controlled substances on the development and well-being*

of children. The Committee urges the State Party to adopt the necessary legislation to prohibit sale, use and trafficking of controlled substances by children, and to ensure effective implementation of all legislation prohibiting alcohol and substance use by children. (Nepal CRC/C/15/Add.261, paras. 83 and 84)

As well as prohibiting their production, States can also take measures to combat economic dependence on drugs, for example by encouraging farmers to cultivate crops other than drug crops by special subsidies or tax exemptions (see, for example, Viet Nam CRC/C/3/Add.21, para. 252).

Constructive measures. The criminal aspects of the issue should not obscure the fact that those involved are children, often very vulnerable children, who have little opportunity in life. UNODC points out that certain groups of children are particularly at risk, such as children working or living on the streets, refugees, victims of disasters and those from marginalized countries.

The Committee has also noted the particular need for drug prevention, treatment and rehabilitation in relation to socially excluded groups, such as those in refugee camps (for example, in Sierra Leone) and in slums or children who drop out of school (for example, in Djibouti).

It should therefore be noted that article 33 is concerned with the "protection" of children from drug abuse. Placing harsh custodial penalties on children for drug use is an ineffective form of protection. Custody may (but does not necessarily) remove children from exposure to drugs, but cannot teach them how to cope with this exposure once back on the streets; moreover prisons or detention centres may expose these children to more serious forms of drug abuse or serve to introduce them to the drug underworld. It is more constructive to give legal powers to intervene in cases of child drug abuse to the welfare authorities rather than to criminal justice agencies.

The Committee has consistently opposed the criminalization of children who use drugs, for example welcoming the fact that in Thailand:

"... adolescent drug use is now treated as a medical rather than criminal matter" (Thailand CRC/C/THA/CO/2, para. 53)

and has expressed concern about countries that fail in this respect, such as Armenia:

"The Committee ... notes with concern that child drug abusers are considered as criminals under article 231 of the Criminal Code and not as children in need of care and protection." (Armenia CRC/C/15/Add.225, para. 62)

It is also worried by non-criminal responses which are, nonetheless, stigmatizing or involve depriving children of their liberty or other civil rights, such as placing children in closed rehabilitative units or mental health wards:

"The Committee notes the State Party's non-punitive approach to victims of drug abuse, but is concerned that children abusing drugs may be placed in a closed institution for a period of up to three years.
"The Committee recommends that the State Party develop non-institutional forms of treatment of children who abuse drugs and make the placement of children in an institution a measure of last resort. In addition, the Committee recommends that children living in such institutions be provided with basic services such as health, education and other social services and maintain contact with their family during their stay. Finally, the Committee recommends that the State Party set clear standards for existing institutions and ensure periodic review of the placement of children, in the light of article 25 of the Convention." (Brunei Darussalam CRC/C/15/Add.219, paras. 53 and 54)

"The Committee is concerned that... the illicit use of drugs and substances by children is increasing, including the use of crack cocaine and marijuana, as well as other substances, and that some of the children abusing drugs and using substances are placed, for this reason, in mental health institutions...
"The Committee recommends that the State Party... ensure that child drug and substance abusers are not placed in mental institutions unnecessarily and have access to effective structures and procedures for treatment, counselling, recovery and reintegration." (Saint Vincent and the Grenadines CRC/C/15/Add.184, paras. 50 and 51)

"Social and educational" measures

UNODC comments that no single approach or strategy has been proved to be consistently effective in reducing or preventing drug abuse, but the box on page 505 describes those elements which have been shown to be necessary in prevention programmes for youth.

Not all children have drugs education in their school curricula, and where it is, it may often be ineffective or even counter-productive (containing dangerous misinformation or inadvertently glamourizing drug-taking). Some countries have given drugs education a high priority, but most importantly anti-drug strategies should take account of the views of children themselves and should be objective.

The media have a clear part to play. The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) states: "The mass media should be aware of its extensive social role and responsibility, as well as its influence, in communications relating to youthful drug and alcohol abuse. It should use its power for drug abuse prevention by relaying consistent messages through a balanced approach. Effective drug awareness campaigns at all levels should be promoted." (Para. 44)

Health and social services also need to be aware of drug abuse by children. In a number of countries, the paediatric systems are not competent to identify and handle drug abuse by children; adult treatment centres do not accept children and centres for children may be scarce or costly:

"While noting the provision of the Juvenile Justice Law allowing the rehabilitation of convicted children and/or adolescents suffering from drug addiction as an alternative to imprisonment, the Committee is concerned at the scarcity of treatment centres for drug addiction which also limits the possibility of placing children in conflict with the law." (Costa Rica CRC/C/15/Add.266, para. 53)

"While noting... the increased number of treatment and social reintegration services for children, the Committee ... is concerned about the fact that children, who voluntarily seek treatment in drug recovery and reintegration centres, are often asked to pay for treatment causing insurmountable obstacles to children of limited means and denying their access to treatment and reintegration." (Philippines CRC/C/15/Add.259, para. 81)

Services specifically tailored for children and young people are urgently needed in many countries:

"The Committee recommends that the State Party continue to strengthen its efforts to... provide children and adolescents with accurate and objective information about drug and substance use, including hard drugs, glue and solvent sniffing, through public school programmes and media campaigns and protect children from harmful misinformation and models; ... develop free and easily accessible drug abuse treatment and social reintegration services for children who are victims of drug and substance abuse; ... tailor specific drug abuse, including glue and solvent sniffing, recovery and social reintegration programmes and centres for street children and cooperate with non governmental organizations in this respect; ... allocate adequate budgetary funds to existing drug recovery and reintegration centres; [and] seek technical assistance from, among others, the United Nations Office on Drugs and Crime and WHO." (Philippines CRC/C/15/Add.259, para. 82)

The Committee has also noted the particular needs of children affected by HIV/AIDS in respect of drugs:

"The use of substances, including alcohol and drugs, may reduce the ability of children to exert control over their sexual conduct and, as a result, may increase their vulnerability to HIV infection. Injecting practices using unsterilized instruments further increase the risk of HIV transmission. The Committee notes that greater understanding of substance use behaviours among children is needed, including the impact that neglect and violation of the rights of the child has on these behaviours. In most countries, children have not benefited from pragmatic HIV prevention programmes related to substance use, which even when they do exist have largely targeted adults. The Committee wishes to emphasize that policies and programmes aimed at reducing substance use and HIV transmission must recognize the particular sensitivities and lifestyles of children, including adolescents, in the context of HIV/AIDS prevention. Consistent with the rights of children under articles 33 and 24 of the Convention, States Parties are obligated to ensure the implementation of programmes which aim to reduce the factors that expose children to the use of substances, as well as those that provide treatment and support to children who are abusing substances." (Committee on the Rights of the Child, General Comment No. 3 on "HIV/AIDS and the rights of the child", 2003, CRC/GC/2003/3, para. 39)

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty requires that detention facilities "should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society" and "should adopt specialized drug prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles". (Rules 53 and 54)

article 33

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

article 33

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 33, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 33 is relevant to the **departments of justice, home affairs, social welfare, education, health, media and public relations**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 33 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 33 likely to include the training of **community and street workers, youth workers, social workers, teachers, police, judiciary, medical and psychological professionals and parent education**)?

• Specific issues in implementing article 33

Has the State ratified:

- ☐ the 1961 Single Convention on Narcotic Drugs with its 1972 amending Protocol?
- ☐ the 1971 Convention on Psychotropic Drugs?

- ☐ Do laws clearly prohibit the use of illicit narcotic drugs and psychotropic substances?
- ☐ Do laws clearly prohibit the production and trafficking of these drugs and substances?
- ☐ Do laws attach any additional penalties for drug offences committed by adults where children have been sold or given these drugs and substances or where children have been used for their production or trafficking?
- ☐ Do laws prevent the sale of solvents to children without appropriate authorization from parents or other adults?
- ☐ Do laws set a minimum age for the purchase of alcohol and tobacco?
- ☐ Have any surveys been undertaken to assess the scale of drug abuse among children?

How to use the checklist, see page XIX

Has research been undertaken in relation to drug abuse and children to
- ☐ identify risk factors?
- ☐ identify prevention strategies?
- ☐ identify rehabilitation strategies?

Is drug education and education about alcohol and tobacco a part of
- ☐ primary education currricula?
- ☐ secondary education curricula?
- ☐ youth and community work?
- ☐ parenting education?

☐ Are treatment and rehabilitation services, specifically tailored for children who abuse drugs, available in the health or social welfare sectors?

☐ Are rehabilitation interventions, based on the best interests of the children concerned, available to parents and other family members who abuse drugs?

☐ Are interventions for children and parents evaluated?

☐ Are the views of children taken into account when anti-drug policies and strategies are devised and implemented?

☐ Do legal interventions aim at treating and rehabilitating rather than punishing children who become involved in drugs?

☐ Do professionals and judiciary in the juvenile justice system coordinate with professionals in the health, education and social work sectors in responding to drug offences by children?

☐ Are measures taken to protect young people in closed or locked institutions from exposure to drugs?

☐ Are there public campaigns to discourage the use of drugs by the young?

☐ Are such campaigns evaluated?

☐ Are parents and guardians supported as necessary, including offering education on with the skills to provide physically and emotionally for their children?

Reminder: **The Convention is indivisible and its articles interdependent. Article 33 should not be considered in isolation.**

Particular regard should be paid to: The other general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

How to use the checklist, *see page XIX*

Closely related articles

Articles whose implementation is particularly related to that of article 33 include:

Article 17: mass media, dissemination of information
Article 19: protection from all forms of maltreatment by parents and other carers
Article 24: health and health services
Article 29: education to prepare children for responsible life in a free society
Article 32: protection from hazardous or exploitative work
Article 37: protection for children deprived of liberty
Article 39: rehabilitative care
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Sexual exploitation of children

Text of Article 34

1. States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

Article 34 obliges States to protect children from "all forms of sexual exploitation and sexual abuse" and to take measures against the three particular (and often linked) forms of exploitation – sexual abuse, prostitution and use in pornography – set out in paragraphs (a), (b) and (c). Article 19 more generally covers protection from "all forms of physical or mental violence" and specifically mentions sexual abuse (see page 249). The exploitative use of children in prostitution and pornography is linked to the sale of and traffic in children (see article 35, page 531).

While sexual exploitation of children has only received international attention relatively recently, it has been highlighted extensively within the United Nations system during the 1990s, with the appointment of a Special Rapporteur on the sale of children, child prostitution and child pornography, the adoption of Programmes of Action by the Commission on Human Rights, and the First and Second World Congresses against Commercial Sexual Exploitation of Children, held in 1996 and 2001. Also in 2001 the General Assembly, on the recommendation of the Committee on the Rights of the Child, requested the Secretary-General to conduct a study on violence, including sexual violence, against children. In February 2003 Professor Sérgio Paulo Pinheiro was appointed to lead this study, which reported in 2006.

In 2000 the United Nations General Assembly adopted the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (for full commentary, see page 669). ■

Summary

Background to adoption of the Optional Protocol

In 1994, the Committee on the Rights of the Child noted the decision of the Commission on Human Rights to establish an open-ended working group to prepare guidelines for a possible draft optional protocol to the Convention on the sale of children, child prostitution and child pornography, as well as basic measures needed for their prevention and eradication. The Committee adopted a formal statement on "Cooperation with United Nations bodies – Sale of children, child prostitution and child pornography", in which it stressed the important framework established by the Convention to deal with such situations, and

"... that the child affected by situations of sale, prostitution and pornography should be considered mainly as a victim and that all measures adopted should ensure full respect for his or her human dignity, as well as special protection and support within the family and society." (Committee on the Rights of the Child, Report on the sixth session, April 1994, CRC/C/29, p. 4. See also Report on the tenth session, October/November 1995, CRC/C/46, paras. 220 and 226.)

In a 1996 statement to the working group, the Committee pointed out that the Convention not only provides specific provisions on sexual exploitation, but that it has also

"... set up a holistic approach for the consideration of the human rights of children. In the light of such an approach, all rights are recognized as inherent to the human dignity of the child, and the implementation of one right will only be effective when taking into consideration the implementation of, and respect for, all the other rights of the child. In a word, the Convention reaffirms the indivisibility and interdependence of human rights.

"The protection of the child from all forms of exploitation, including from sale, prostitution or pornography, should therefore not be seen simply in isolation but in the broader context of the realization of children's rights and taking in due consideration the international obligations arising from the Convention." (Committee on the Rights of the Child, Report on the eleventh session, January 1996, CRC/C/50, p. 45)

The Committee also noted that other important legal instruments had been adopted relevant to the protection of the child against exploitation, mentioning the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, and the ILO Forced Labour Convention, 1930 (No.29),

"... which are in reality used by the Committee on the Rights of the Child within the framework of its monitoring functions." (CRC/C/50, p. 46)

At its twentieth session (January 1999) the Committee made a statement to the fifth session of the open-ended working group on the draft optional protocol, urging reconsideration of the best way of proceeding:

"... it seems to the Committee that it might be helpful for the working group to take stock of recent developments and to reassess its approach in the light of these changing circumstances, with a view to providing a very valuable opportunity for the international community to ensure that the overall approach which is emerging is optimal. There are a lot of calls for coherence and coordination but it is difficult to achieve these objectives when many initiatives are developing simultaneously; it is essential to avoid duplication and overlapping initiatives, as well as the risk of inconsistency and incompatibility... It is, indeed, the belief of the Committee that the holistic approach to the rights of the child enshrined in the Convention requires a careful effort, and closer collaboration among all the relevant actors, to ensure the harmonization of outcomes." (Committee on the Rights of the Child, Report on the twentieth session, January 1999, CRC/C/84, para. 217)

Despite the Committee's emphasis (and that of various concerned non-governmental organizations) that it would be more productive to strengthen existing instruments, the open-ended working group continued to meet and develop successive drafts of the optional protocol. On 25 May 2000 the General Assembly adopted the Optional Protocol. By July 2007, it had been ratified or acceded to by over one hundred States (see page 671).

Other international instruments and standards

The Universal Declaration of Human Rights (article 4) requires generally that: "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms." This is repeated in article 8 of the International Covenant on Civil and Political Rights, which also covers "forced and compulsory labour" (see article 32, page 486). The Human Rights Committee, in a General Comment on article 24 of the International Covenant (which recognizes children's right to protection), notes the need to protect children "from being exploited by means of forced labour or prostitution" (Human Rights Committee, General Comment No, 17, 1989, HRI/GEN/1/Rev.8, para. 3, p. 184).

The 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others targets procurers and exploiters of prostitutes (General Assembly resolution 317(IV), 2 December 1949, annex); the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery requires States to "take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of…any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour" (article 1). The 1979 Convention on the Elimination of All Forms of Discrimination against Women requires States Parties in article 6 to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women".

The Committee on the Elimination of Discrimination against Women issued a General Recommendation in 1991 on violence against women which notes in commenting on article 6 that: "Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence." (Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, 1991, HRI/GEN/1/Rev.8, para. 15, p. 304)

The ILO Worst Forms of Child Labour Convention, 1999 (No.182) includes in its definition of the worst forms of child labour, "the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances" (see article 32, page 479 and full text in Appendix 4, page 759).

In 2000 the United Nations Convention against Transnational Organized Crime was adopted, together with its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (children are defined as under-18-year-olds). The purposes of the Protocol are "to prevent and combat trafficking in persons, paying particular attention to women and children" (children are defined as in the Convention on the Rights of the Child) and to "protect and assist the victims of such trafficking, with full respect for their human rights", promoting cooperation among States Parties to meet these objectives (article 2). "Trafficking in persons" is defined to mean "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation". "Exploitation" includes "the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs" (article 3). The Protocol covers offences which are transnational in nature and involve "an organized criminal group". It requires States Parties to "establish comprehensive policies, programmes and other measures" to prevent and combat trafficking in persons and to protect victims (article 9). (For full text of Protocol, see Appendix 4, page 761.)

Other international initiatives

Following the adoption of the Convention on the Rights of the Child in 1989, increasing attention has been paid, through various United Nations bodies and other international initiatives, to the sexual exploitation of children.

Human Rights Council's Special Rapporteurs and recommendations for action

In 1990, the Commission on Human Rights appointed a Special Rapporteur on the sale of children, child prostitution and child pornography, who prepares annual reports for the Human Rights Council, carries out field visits and prepares country-specific reports, communicates with Governments where there are allegations of violations of children's rights and promotes international cooperation. (For further discussion of sale of and trafficking in children, see article 35, page 531, and Optional Protocol, page 669.) The successive reports of the Rapporteurs provide detailed discussion of conditions in countries that they have visited, thematic studies and recommendations for action. (These reports are available at www.ohchr.org/english/issues/children/rapporteur/annual.htm.)

Two other Special Rapporteurs – on violence against women (appointed by Commission on Human Rights resolution 1994/45) and on situations of systematic rape, sexual slavery, and slavery-like practices during periods of armed conflict (appointed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities) – have presented reports and

recommendations relevant to the protection of children from sexual exploitation.

World congresses against commercial sexual exploitation of children

The First World Congress against Commercial Sexual Exploitation of Children, held in Stockholm (Sweden) in August 1996, included government representatives from 122 countries together with United Nations agencies and NGOs. They committed themselves to a "global partnership against the commercial sexual exploitation of children" and produced a detailed Declaration and Agenda for Action rooted in the Convention: "The commercial sexual exploitation of children is a fundamental violation of children's rights. It comprises sexual abuse by the adult and remuneration in cash or kind to the child or to a third person or persons. The child is treated as a sexual object and as a commercial object. The commercial sexual exploitation of children constitutes a form of coercion and violence against children, and amounts to forced labour and a contemporary form of slavery." (Declaration, A/51/385, para. 5)

The Agenda for Action identified the Committee on the Rights of the Child as a catalyst, with a key role in eliminating commercial sexual exploitation. It provided detailed recommendations for legislative, social and educational measures. It urged States to prepare national agendas for action and indicators of progress, with set goals and a time frame for implementation by the year 2000 (see box opposite). A Second World Congress was held in Yokohama, Japan, in December 2001 and adopted a Global Commitment reaffirming these goals (see box, page 526).

United Nations General Assembly's special session on children

The outcome report of the United Nations General Assembly's special session on children in 2002 called on States to:

"… Take concerted national and international actions as a matter of urgency to end the sale of children and their organs, sexual exploitation and abuse, including the use of children for pornography, prostitution and paedophilia, and to combat existing markets.

"Raise awareness of the illegality and harmful consequences of sexual exploitation and abuse, including through the Internet, and the trafficking of children.

"Enlist the support of the private sector, including the tourism industry and the media, for a campaign against sexual exploitation and trafficking of children.

"Identify and address the underlying causes and the root factors, including external factors, leading to sexual exploitation and trafficking of children and implement preventive strategies against sexual exploitation and trafficking of children.

"Ensure the safety, protection, and security of victims of trafficking and sexual exploitation and provide assistance and services to facilitate their recovery and social reintegration.

"Take necessary action, at all levels, as appropriate, to criminalize and penalize effectively, in conformity with all relevant and applicable international instruments, all forms of sexual exploitation and sexual abuse of children, including within the family or for commercial purposes, child prostitution, paedophilia, child pornography, child sex tourism, trafficking, the sale of children and their organs and engagement in forced child labour and any other form of exploitation, while ensuring that, in the treatment by the criminal justice system of children who are victims, the best interests of the child shall be a primary consideration.

"Monitor and share information regionally and internationally on the crossborder trafficking of children; strengthen the capacity of border and law enforcement officials to stop trafficking and provide or strengthen training for them to respect the dignity, human rights and fundamental freedoms of all those, particularly, women and children who are victims of trafficking.

"Take necessary measures, including through enhanced cooperation between governments, intergovernmental organizations, the private sector and nongovernmental organizations to combat the criminal use of information technologies, including the Internet, for purposes of the sale of children, for child prostitution, child pornography, child sex tourism, paedophilia and other forms of violence and abuse against children and adolescents." (United Nations, Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, paras. 40 to 47)

United Nations Secretary-General's Study on Violence Against Children

In 2001 the United Nations General Assembly requested that the Secretary-General conduct a comprehensive global study on violence against children. This study reported in 2006; a more detailed complementary *World Report on Violence against Children* was also published (for summary of the study and overarching recommendations, see article 19, page 251). Sexual exploitation was, naturally, a focus of this study. The *World Report* noted:

Stockholm World Congress Declaration

The First World Congress against Commercial Sexual Exploitation of Children (Stockholm, Sweden, 1996) in its Declaration calls on States, in cooperation with national and international organizations and civil society, to:

- accord high priority to action against the commercial sexual exploitation of children and allocate adequate resources for this purpose;
- promote stronger cooperation between States and all sectors of society to prevent children from entering the sex trade and to strengthen the role of families in protecting children against commercial sexual exploitation;
- criminalize the commercial sexual exploitation of children, as well as other forms of sexual exploitation of children, and condemn and penalize all those offenders involved, whether local or foreign, while ensuring that the child victims of this practice are not penalized;
- review and revise, where appropriate, laws, policies, programmes and practices to eliminate the commercial sexual exploitation of children;
- enforce laws, policies and programmes to protect children from commercial sexual exploitation and strengthen communication and cooperation between law enforcement authorities;
- promote adoption, implementation and dissemination of laws, policies, and programmes supported by relevant regional, national and local mechanisms against the commercial sexual exploitation of children;
- develop and implement comprehensive gender-sensitive plans and programmes to prevent the commercial sexual exploitation of children, to protect and assist the child victims and to facilitate their recovery and reintegration into society;
- create a climate through education, social mobilization, and development activities to ensure that parents and others legally responsible for children are able to fulfil their rights, duties and responsibilities to protect children from commercial sexual exploitation;
- mobilize political and other partners, national and international communities, including intergovernmental organizations and non-governmental organizations, to assist countries in eliminating the commercial sexual exploitation of children; and
- enhance the role of popular participation, including that of children, in preventing and eliminating the commercial sexual exploitation of children. (A/51/385, pp. 3 and 4)

The Agenda for Action provides detailed proposals under the headings: "Coordination and cooperation; Prevention; Protection; Recovery and Reintegration; and Child participation." A Second World Congress was held in Yokohama, Japan, in December 2001 (see page 526).

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"Although statistics relating to the number of children used in prostitution are broad estimates and all statistics concerning prostitution should be treated with caution, around one million children are thought to enter prostitution every year. A 13-country study by Save the Children suggests that child sexual exploitation is increasing, with evidence of growing criminal activities relating to trafficking of children for sexual purposes, exploitation by tourists and travelers, and pornography and Internet-related crimes…

"A range of predisposing factors for child sexual explotation have been identified: violence in the home and family, including sexual abuse from husbands of young married girls, who will not be accepted back by their parents, or expulsion from the school or workplace. The ways children enter prostitution are therefore intrinsically abusive, and include abandonment and extreme social stigma. Some children are born into the trade in brothel communities, or given to priests in ritual forms of sexual slavery… Disability can also be a risk factor…

"There is also widespread evidence from every region that many girls and boys sell sex on the street simply as a survival strategy in exchange

for food, shelter or drugs." (Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006, pp. 246 and 247)

The Study recommended prohibition of all forms of violence against children, including all sexual violence, setting a target date of 2009.

The Committee's examination of States Parties' reports

The Committee has paid consistent attention to the issue of sexual exploitation during its examination of reports from States Parties. Where the Committee considers that the State has not taken sufficient action it routinely recommends a series of measures, as in its Concluding Observations to Benin:

"The Committee urges the State Party to:
(a) Conduct a comprehensive study to assess the causes, nature and extent of sexual exploitation and abuse of children;
(b) Adopt a plan of action to prevent and combat sexual exploitation and sexual abuse;
(c) Ensure that children's testimonies are recorded in an appropriate way and that the persons carrying out the hearing have the necessary specialist qualifications;
(d) Make the prevention of sexual abuse and exploitation a compulsory subject in all relevant training programmes;
(e) Take measures to ensure that teachers and children be made fully aware of the gravity of sexual abuse and violence and that the inter-ministerial order penalizing sexual violence is rigorously applied as well as the due process of law;
(f) Ensure that perpetrators of sexual abuse and exploitation are brought to justice;
(g) Provide sustained information and education on the Persons and Family Code together with actions to improve knowledge and operational capacity of actors in the judicial system and review and amend as appropriate the existing legislation to establish a minimum age for sexual consent; and
(h) Strengthen its efforts, including adequate human and financial resources, to provide care, full physical and psychological recovery and social reintegration for child victims of sexual exploitation and sexual abuse and consider establishing a centre for recovery and social reintegration of the child victims." (Benin CRC/C/BEN/CO/2, para. 70)

Other measures for tackling sexual exploitation of children appear in the Committee's Concluding Observations to Costa Rica and the Yemen, recommending:

"… the State Party should promote and develop universal policies that directly address the social, economic and ideological factors which render the under-18 population so vulnerable to sexual exploitation and foster the conditions for commission of this crime; promote and develop intersectoral programmes and institutions aimed at early prevention and at assisting young girls and adolescents at risk of sexual exploitation, or who are already its victims; promote and develop programmes of comprehensive assistance to victims; … [and secure] … the allocation of a larger budget dedicated specifically to battling sexual exploitation. In developing these programmes, the Committee recommends the participation on a voluntary basis of adolescents who were themselves victims of commercial sexual exploitation. The Committee further recommends that the State Party seek the technical cooperation of UNICEF in this respect." (Costa Rica CRC/C/15/Add.266, para. 50)

and

"The Committee recommends that the State Party…
(a) Undertake a study on the prevalence of sexual abuse and exploitation;
(b) Take all necessary measures to prevent and end this practice through a comprehensive strategy, notably by holding debates and launching awareness campaigns;
(c) Ensure that victims of sexual abuse and exploitation have access to appropriate recovery and reintegration programmes and services;
(d) Provide the Hot-Line Telephone Service for Psychological Aid with adequate human and financial resources; and
(e) Seek assistance from, inter alia, *WHO and UNICEF."* (Yemen CRC/C/15/Add.267, para. 68)

In addition it consistently urges States to take into consideration the recommendations adopted at the 1996 and 2001 World Congresses against Commercial Sexual Exploitation of Children.

Groups particularly vulnerable to sexual exploitation

The Committee has identified certain risk factors, or groups of children who are at particular risk of sexual abuse and exploitation:

"… The Committee notes with grave concern that certain groups of children are at a particularly higher risk of being sold and trafficked, including girls, internally displaced children, street children, orphans, children from rural areas, refugee children and children belonging to more vulnerable castes…" (Nepal CRC/C/15/Add.26, para. 95)

"… The Committee notes, however, concerns relating to the vulnerability of street children and, in particular, Aboriginal children who, in

disproportionate numbers, end up in the sex trade as a means of survival…" (Canada CRC/C/15/Add.215, para. 52)

"The Committee is deeply concerned at the increasing number of children engaged in prostitution… the Committee is concerned about certain risk factors, including persisting poverty, the high rate of unemployment, difficult family circumstances that lead to runaways from home and a growth in tourism, which may increase sexual exploitation and trafficking in children." (Mongolia CRC/C/15/Add.264, para. 64)

Girls

The Platform for Action of the Fourth World Conference on Women notes: "Girls often face pressures to engage in sexual activity. Due to such factors as their youth, social pressures, lack of protective laws, or failure to enforce laws, girls are more vulnerable to all kinds of violence, particularly sexual violence, including rape, sexual abuse, sexual exploitation, trafficking..." (Platform for Action, para. 269) Proposed actions include the elimination of child pornography, child prostitution, sexual abuse, rape and incest (paras. 277 (b) and (d)). The Report on the follow-up special session of the United Nations General Assembly, held in 2000, proposes action to address the root factors, including external factors, "that encourage trafficking in women and girls for prostitution and other forms of commercialized sex…" (General Assembly, twenty-third special session, 10 June 2000, A/RES/S-23/3, para. 70(a))

Child domestic workers, who are primarily girls, are often exposed to sexual abuse. UNICEF's *The State of the World's Children 1997* suggests: "Sexual abuse is often regarded by the employer as part of the employment terms" (p. 33). In addition the Committee condemns practices which are used in various countries to make sexual exploitation of girls more socially acceptable, such as 'temporary marriages' in some Islamic countries or 'sugar daddies' in the Caribbean:

"… the Committee ... is concerned that… there have been reports of the practice of 'enjo kosai', or compensated dating… [and] … the low minimum age of consent, which might contribute to the practice of 'enjo kosai', hampers the prosecution of sexual abuse of children." (Japan CRC/C/15/Add.231, para. 51)

"The... reported cases of the so-called 'sugar daddies', adult men having sexual liaison with girls and providing both girls and their families with monetary and material benefits in exchange for sex, give rise to serious concerns." (Belize CRC/C/15/Add.252, para. 68)

"The Committee is concerned about reports of the trafficking and sale of persons under 18 years of age, particularly young girls from rural areas, which is facilitated by 'temporary marriages' or 'siqeh' – marriages which last from 1 hour to 99 years…" (Islamic Republic of Iran CRC/C/15/Add.254, para. 70)

Boys

It should also be noted that the Committee sometimes raises concerns with countries that fail to protect boys from sexual assault and exploitation, for example:

"… the Committee … is concerned that… The Penal Code maintains a narrow definition of rape as an act committed by a male against a female…
"The Committee recommends that the State Party… amend legislation on sexual exploitation and abuse to ensure equal protection for boys and girls." (Japan CRC/C/15/Add.231, paras. 51 and 52)

"The Committee expresses its deep concern at the information that child prostitution is increasing and that not only girls, but also boys who work as vendors, couriers or domestic servants, are particularly vulnerable to sexual exploitation…" (Algeria CRC/C/15/Add.269, para. 78)

"… The Committee is concerned about the information that sexual exploitation, particularly sex tourism, is growing in the country and that many girls and boys at a very young age are engaged in commercial sexual exploitation." (Ghana CRC/C/GHA/CO/2, para. 67)

Children with disabilities

Difficulties of communication and the institutionalization of many children with disabilities may make them particularly prone to sexual exploitation and abuse (see article 23, page 321). Article 16 of the Convention on the Rights of Persons with Disabilities, adopted in December 2006, requires States to "take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects", such as the independent monitoring of services for people with disabilities, educating persons with disabilities and their carers on how to avoid, recognize and report abuse and the effective prosecution of abusers, where appropriate.

The complementary Standard Rules on the Equalization of Opportunities for Persons with Disabilities notes: "Persons with disabilities and their families need to be fully informed about taking precautions against sexual and other forms

of abuse. Persons with disabilities are particularly vulnerable to abuse in the family, community and institutions and need to be educated on how to avoid the occurrence of abuse, recognize when abuse has occurred and report on such acts." (Rule 9(4))

The *World Report on Violence against Children*, accompanying the United Nations Secretary-General's Study on this subject, observes that children with disabilities may also be more vulnerable to sexual exploitation, noting that, for example: "Some brothel proprietors in Thailand reportedly seek out girls who are deaf, calculating that they will be less able to protest or escape since they will not be able to communicate easily with customers or employers." (Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006, p. 246)

Children in armed conflict

The study on the *Impact of Armed Conflict on Children* suggests: "Rape is not incidental to conflict. It can occur on a random and uncontrolled basis due to the general disruption of social boundaries and the license granted to soldiers and militias. More often, however, it functions like other forms of torture and is used as a tactical weapon of war to humiliate and weaken the morale of the perceived enemy. During armed conflict, rape is used to terrorize populations or to force civilians to flee."

Twelve country studies on sexual exploitation of children in situations of armed conflict were prepared for the report, which show that women and girls are particularly at risk; children affected by gender-based violence also include those who have witnessed the rape of a family member and those who are ostracized because of an assault on a mother. The studies illustrate how poverty, hunger and desperation may force women and girls into prostitution and how children have been trafficked from conflict situations to work in brothels in other countries. Sexual exploitation has a devastating effect on physical and emotional development; unwanted and unsafe sex is likely to lead to sexually transmitted diseases and HIV/AIDS, which not only affect immediate health but also future sexual and reproductive health and mortality. The report provides specific recommendations on the subject of sexual exploitation and gender-based violence (*Impact of Armed Conflict on Children,* Report of the expert of the Secretary-General, Ms Graça Machel, 26 August 1996, A/51/306, paras. 91 *et seq*., and 110; see box).

Detailed relevant practical advice for conflict situations is provided in *Guidelines for HIV Interventions in Emergency Settings* (1996), a joint publication of UNHCR, WHO and UNAIDS, which emphasizes that "HIV spreads fastest in conditions of poverty, powerlessness and social instability – conditions that are often at their most extreme during emergencies" (p. 2). The connection between HIV infection and children in armed conflict is also stressed by the Committee in its General Comment No. 3 on "HIV/AIDS and the rights of the child":

"The Committee considers that the relationship between HIV/AIDS and the violence or abuse suffered by children in the context of war and armed conflict requires specific attention. Measures to prevent violence and abuse in these situations are critical, and States Parties must ensure the incorporation of HIV/AIDS and child rights issues in addressing and supporting children – girls and boys – who were used by military or other uniformed personnel to provide domestic help or sexual services, or who are internally displaced or living in refugee camps. In keeping with States Parties' obligations, including under articles 38 and 39 of the Convention, active information campaigns, combined with the counselling of children and mechanisms for the prevention and early detection of violence and abuse, must be put in place within conflict- and disaster-affected regions, and must form part of national and community responses to HIV/AIDS." *(Committee on the Rights of the Child, General Comment No. 3, 2003, CRC/GC/2003/3, para. 38)*

The Committee observed to Sierra Leone:

"The Committee expresses its deep concern with regard to the many incidents of sexual exploitation and abuse of children, particularly in the context of the conscription or abduction of children by armed persons and in the context of attacks on civilian populations by armed persons, and particularly with regard to girls. The Committee is also concerned at reports of commercial sexual exploitation and of widespread sexual abuse of girls within the family, within internally displaced person camps and within communities.

"The Committee urges the State Party to include studies of incidents of sexual abuse in the context of the armed conflict among the issues to be discussed by the truth and reconciliation commission. The Committee recommends that the State Party initiate information campaigns alerting the public to the risks of sexual abuse within the family and within communities. In addition, the Committee urges the State Party to provide the necessary psychological and material assistance to the victims of such exploitation and abuse and to assure their protection from any possible social stigmatization." *(Sierra Leone CRC/C/15/Add.116, paras. 87 and 88)*

Sexual exploitation and armed conflict

In her study, *Impact of Armed Conflict on Children,* Ms Graça Machel submits the following specific recommendations regarding sexual exploitation and gender-based violence:

(a) All humanitarian responses in conflict situations must emphasize the special reproductive health needs of women and girls including access to family planning services, pregnancy as a result of rape, sexual mutilation, childbirth at an early age or infection with sexually transmitted diseases, including HIV/AIDS. Equally important are the psychosocial needs of mothers who have been subjected to gender-based violence and who need help in order to foster the conditions necessary for the healthy development of their children;

(b) All military personnel, including peacekeeping personnel, should receive instruction on their responsibilities towards civilian communities and particularly towards women and children as part of their training;

(c) Clear and easily accessible systems should be established for reporting on sexual abuse within both military and civilian populations;

(d) The treatment of rape as a war crime must be clarified, pursued within military and civilian populations, and punished accordingly. Appropriate legal and rehabilitative remedies must be made available to reflect the nature of the crime and its harm;

(e) Refugee and displaced persons camps should be so designed as to improve security for women and girls. Women should also be involved in all aspects of camp administration but especially in organizing distribution and security systems. Increased numbers of female personnel should be deployed to the field as protection officers and counsellors;

(f) In every conflict, support programmes should be established for victims of sexual abuse and gender-based violence. These should offer confidential counselling on a wide range of issues, including the rights of victims. They should also provide educational activities and skills training.

("Impact of Armed Conflict on Children", Report of the expert of the Secretary-General, Ms Graça Machel, A/51/306, 26 August 1996, para. 110)

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And Colombia:

"... The Committee is especially concerned over the situation in rural areas where children are at risk as a consequence of the ongoing internal armed conflict. In particular, the Committee expresses concern regarding the increasing number of girls who are subjected to sexual violence and is disturbed by numerous reports of rapes committed by members of the military. The Committee is also concerned about other forms of torture and cruel, inhuman and degrading treatment by law enforcement officials, including in detention facilities, and also over abuses in institutional care.

"The Committee urges the State Party to take effective measures to protect children from torture and other cruel, inhuman or degrading treatment. The Committee emphasizes the urgent need to investigate and sanction all reported cases, committed by the military, law enforcement officials or any person acting in an official capacity, in order to break the pervasive cycle of impunity of serious human rights violations. The Committee recommends that the State Party ensure that all child victims of torture, cruel and degrading treatment are provided access to physical and psychological recovery and social reintegration as well as compensation, giving due consideration to the obligations enshrined in articles 38 and 39 of the Convention." (Colombia CRC/C/COL/CO/3, paras. 51 and 52)

Refugees and internally displaced children

The Office of the United Nations High Commissioner for Refugees points out that refugees, in particular unaccompanied children, are especially vulnerable to sexual violence. UNHCR published *Sexual Violence against Refugees: Guidelines on Prevention and Response* in 1995. The report states: "Sexual violence against refugees is widespread. Women and young girls – and, less frequently, men and boys – are vulnerable to attack, both during their flight and while in exile. They are vulnerable from many quarters and in every case, the physical and psychological trauma that results can only add to the pain of displacement and the bitterness of exile." It

provides a detailed background, preventive measures and practical measures to be taken in response to incidents of sexual violence. Among categories of refugees identified as being most at risk of sexual violence are unaccompanied children, children in foster care arrangements and those in detention or detention-like situations. (*Sexual Violence against Refugees: Guidelines on Prevention and Response*, UNHCR, 1995, preface and para. 1.2)

These concerns are reflected in the Committee's General Comment No. 6 on "Treatment of unaccompanied or separated children outside their country of origin":

"Unaccompanied or separated children in a country outside their country of origin are particularly vulnerable to exploitation and abuse. Girls are at particular risk of being trafficked, including for purposes of sexual exploitation.
"Articles 34 to 36 of the Convention must be read in conjunction with special protection and assistance obligations to be provided according to article 20 of the Convention, in order to ensure that unaccompanied and separated children are shielded from trafficking, and from sexual and other forms of exploitation, abuse and violence." (Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, paras. 50 and 51. See also article 35, page 531.)

Legislative and other measures

The Committee on the Rights of the Child has placed a particular emphasis on the need for legislation as a basis for protection against sexual exploitation. The *Guidelines for Periodic Reports (Revised 2005)* requests information on measures to protect the child from all forms of sexual exploitation and sexual abuse, and specifically requests the State to provide data on prosecutions, including: "Number of cases of commercial sexual exploitation, sexual abuse, sale of children, abduction of children and violence against children reported during the reporting period… [and]… Number and percentage of those that have resulted in sanctions, with information on the country of origin of the perpetrator and the nature of the penalties imposed…" (See page 703.)

The Committee has proposed that legal reform should include criminalizing the use of child prostitutes and the possession of child pornography, as well as the publication and distribution of child pornography:

"The Committee is deeply concerned that appropriate, in particular legislative, measures have not yet been taken to forbid the possession of child pornography and the purchasing of sexual services from child prostitutes. It is also seriously concerned at the existence of sex telephone services accessible by children...
"In the process of reforming the Penal Code, the Committee strongly recommends that the possession of child pornography materials and the purchase of sexual services from child prostitutes be made illegal..."

The Committee went on to recommend in addition:

"... that the State Party take all appropriate measures to protect children from accessing sex telephone services and from the risk of being sexually exploited by paedophiles through these telephone services that can be accessed by anyone..." (Finland CRC/C/15/Add.53, paras. 19 and 29)

When it examined Finland's Second and Third Reports, the Committee welcomed legal reforms to criminalize the purchase of sex from a child, the possession of child pornography, sexual offences committed abroad by Finnish citizens and the trafficking of children to and through Finland (*Finland CRC/C/15/Add.132, para. 4* and *Finland CRC/C/15/Add.272, para. 52*).

The law has to keep abreast with technological changes that offer new ways of exploiting vulnerable children. The *World Report on Violence against Children* accompanying the Secretary-General's Study on this subject, notes that there is worldwide concern about the potential of the Internet to expose children to images of violence and sexual violence, to disseminate child pornography and to enable predatory abusers to 'groom' and manipulate children they contact through cyber-space: "… protecting children from the negative potential of technology is a serious challenge. The need for a *focus on prevention* as an aboslute imperative in addressing child safety and information and communication technologies was a message that was reiterated throughout the Study process..." The Report recommends: "As well as educating children and parents, Governments should work with the industry to devise global standards for child protection, undertake research on protective hardware and software solutions, and fund worldwide education campaigns on safe use of the new technologies. Governments should also pursue law enforcement approaches, including criminalizing those who make, distribute, possess or profit from pornography involving children." (Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006, pp. 314 and 338)

For example the Committee raised with Sweden reports of cases of sexually abused Swedish

children as a result of contacts via the Internet and recommended that

"... the State Party... strengthen the protection measures for children who are using the Internet and the awareness-raising programmes for children about the negative aspects of the Internet, including by working with service providers, parents and teachers ... [and] ... strengthen the legislation against possession and production of child pornography, including by prohibiting the display of child pornography on the Internet by service providers..." *(Sweden CRC/C/15/Add.248, paras. 43 and 44)*

And it commended Denmark for the fact that its

"... Office of the National Commissioner of Police has established a special IT Investigation Unit which provides for the investigation of criminal offences committed through the Internet, particularly cases concerning child pornography." *(Denmark CRC/C/DNK/CO/3, para. 56)*

However, the Committee is particularly concerned that, while commercial sexual exploitation must be criminalized, the child survivors of it must not be criminalized or penalized, as it told Indonesia and Armenia:

"The Committee wishes to reiterate its opinion that children as victims of sexual abuse and exploitation can never be held responsible or guilty of such acts..." *(Indonesia CRC/C/15/Add.223, para. 82)*

"... the Committee is deeply concerned that persons under 18 years of age engaged in prostitution are prosecuted under the Criminal Code, rather than assisted as victims." *(Armenia CRC/C/15/Add.225, para. 64)*

Age of sexual consent

Most countries define the age at which children are to be judged as able to consent to sexual activity which varies widely between the ages of 12 and 18. The Committee has expressed concern at low ages, and at discrimination between the marriage ages for girls and for boys (it appears that ability to consent to sexual activities is assumed at marriage age in all States). The definition of sexual abuse of children covers more than non-consensual activities, including sexual activities with children below the age of consent, whether or not the child appeared willing or even initiated the activity. In most societies, sexual relations without consent, or involving any form of coercion, are prohibited whatever the age or status of the participants (although the criminalizing of rape within marriage may not yet have occurred in all countries).

During the drafting of what became article 34 of the Convention on the Rights of the Child, representatives from France and the Netherlands, who had proposed inclusion of an article on protection of children from exploitation, including, in particular, sexual exploitation, stated that the purpose was not to regulate the sexual life of children but rather to combat the sexual exploitation of children. During the drafting there was an unsuccessful attempt to delete the word "unlawful" from paragraph (a), which would have implied, according to the Convention's definition of a child, that all sexual activity with under-18-year-olds was to be prevented (E/CN.4/1987/25, pp. 15 to 24; Detrick, p. 434).

As discussed in relation to article 1, the Committee has endorsed the recommendation of the Committee to End Discrimination against Women that 18 should be the minimum age for marriage (see page 8). This does not, however, mean that it supports 18 as the minimum age for sex, though the Committee certainly expresses concerned if no age for sexual consent is set in law.

"While welcoming the adoption of the Code on Persons and the Family which sets the legal age for marriage for boys and girls at 18, the Committee regrets the lack of clarity on the legal minimum age of sexual consent as there is no provision to this effect in the State Party's domestic legislation." *(Benin CRC/C/BEN/CO/2, para. 69)*

Aside from the bar on discrimination in article 2, the Convention is not prescriptive about the age at which the child is to be given the right to consent to sexual activity. Such limits need to be judged against the overall principles of respect for the child's evolving capacities, and for his or her best interests and health and maximum development. And though the Committee has not recommended a particular age for consent, it has in the case of some States Parties proposed that the age should be raised. Twelve years is considered to be manifestly too low (see, for example, Indonesia CRC/C/15/Add.223, para. 81) and the Committee has also expressed concern about 14 years:

"... the Committee is concerned at the rather low age for sexual consent (14 years), which may not provide adequate protection for children older than 14 years against sexual exploitation." *(Iceland CRC/C/15/Add.217, para. 38)*

Sexual exploitation of children may well continue beyond any set age for consent, and the protection of article 34 must extend to the age of 18. For this reason the Committee was critical of the situation in the Russian Federation:

"The Committee is concerned about the large number of children and young people being sexually exploited in the State Party.

It is concerned that teenage prostitution is an acute problem in the State Party. It is also concerned that children aged 14 to 18 years old are not legally protected from involvement in prostitution and pornography." (Russian Federation CRC/C/RUS/CO/3, para. 78)

In some countries a minimum age at which a child is permitted to consent to sexual activities is specified, and in addition a higher age when the sexual relationship is with a person in a position of trust or authority over the child (relation, teacher, caregiver, and so on). Although such distinctions may be made between the perpetrators, the Committee is concerned about any form of discrimination between groups of victims, for example between boys and girls:

"The Committee is concerned at... legislation making sexual exploitation of children only a criminal offence up to the age of 16 and not 18, and the exclusion of boys from this legislation." (Netherlands Antilles CRC/C/15/Add.186, para. 60)

"The Committee is concerned that according to some recent studies a considerable number of children are victims of sexual exploitation... In addition, it notes that the law on sexual abuse is biased against the boy child." (Uganda CRC/C/UGA/CO/2, para. 75)

In some countries there are also different ages of consent for heterosexuality and homosexuality. These differences also breach article 2 of the Convention and the Committee has urged States to remove discrimination based on sexual orientation:

"... concern is expressed at the insufficient efforts made to provide against discrimination based on sexual orientation. While the Committee notes the Isle of Man's intention to reduce the legal age for consent to homosexual relations from 21 to 18 years, it remains concerned about the disparity that continues to exist between the ages for consent to heterosexual (16 years) and homosexual relations.
"It is recommended that the Isle of Man take all appropriate measures, including of a legislative nature, to prevent discrimination based on the grounds of sexual orientation and to fully comply with article 2 of the Convention." (United Kingdom – Isle of Man CRC/C/15/Add.134, paras. 22 and 23. See also United Kingdom – Overseas Territories CRC/C/15/Add.135, paras. 25 and 26)

Sex tourism – the principle of "extraterritoriality"

The adoption of the Optional Protocol on the sale of children, child prostitution and child pornography has focused ratifying States' attention on the need to legislate for sex offences committed by their citizens when abroad, and, if necessary, to extradite them for prosecution (see page 669). More than half of the States ratifying the Convention are now also parties to the Optional Protocol, and will be examined on this issue. For those that have not ratified or acceded to the Protocol, article 34 remains as a safeguard.

Complaints and judicial procedures

In the report of its Day of General Discussion on the "Administration of juvenile justice", the Committee noted that children were often denied the right to lodge complaints when they were victims of violation of their fundamental rights, including in cases of ill-treatment and sexual abuse. The need for children to have access to effective complaints procedures has been a consistent concern of the Committee (Report on the tenth session, October/November 1995, CRC/C/46, paras. 220 and 226; see also article 12, page 158). Children in institutions are especially vulnerable, often isolated from independent adults; children with disabilities may also be vulnerable, because of communication and other difficulties.

Children's complaints, and their evidence when cases come to court, must be taken seriously, in line with the Convention. The Committee recommends that States follow the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (see page 673). These were adopted in 2005 by United Nations Economic and Social Council resolution 2005/20 and stress that child victims and witnesses should be treated with dignity and compassion, given effective assistance including information and an opportunity to express their views; to have their safety and privacy fully protected and to be offered reparation.

Other measures

The Committee has also expressed concern about States' failure to meet the social needs of sexually abused children, for example Kazakhstan:

The Committee is concerned at:
(a) The growing involvement of children in the sex industry and the apparent indifference of society towards the issue of child prostitution, including reports of parents themselves reportedly forcing their children to earn money through prostitution;
(b) The lack of specialized centres to accommodate and provide qualified services, including psychotherapeutic and rehabilitation and reintegration programmes, for child victims of sexual violence." (Kazakhstan CRC/C/15/Add.213, para. 72)

The Agenda for Action of the Stockholm World Congress against Commercial Sexual Exploitation of Children (see page 516) recommends non-legislative action on sexual abuse, for example:

- access to education to improve the status of children;
- improvement of access to all services and providing a supportive environment for families and children vulnerable to commercial sexual exploitation;
- maximize education on the rights of the child; promote children's rights in family education and family development assistance;
- identify or establish peer education programmes and monitoring networks to combat commercial sexual exploitation;
- formulate or strengthen and implement gender-sensitive national social and economic policies and programmes to assist vulnerable children, and families and communities in resisting acts which can lead to commercial sexual exploitation, "with special attention to family abuse, harmful traditional practices and their impact on girls, and to promoting the value of children as human beings rather than commodities; and reduce poverty by promoting gainful employment, income generation and other supports";
- mobilize the business sector, including the tourist industry, against the use of its networks and establishments for commercial sexual exploitation;
- encourage media professionals to develop strategies which strengthen the role of the media in providing information of the highest quality, reliability and ethical standards concerning all aspects of commercial sexual exploitation;
- target those involved with commercial sexual exploitation of children with information, education and outreach campaigns and programmes to promote behavioural changes to counter the practice.

(A/51/385, pp. 6 and 7)

Recovery and reintegration

Article 39 (see page 589) requires States Parties to take all appropriate measures to promote physical and psychological recovery and social reintegration of child victims of any form of abuse, exploitation and so forth.

In its General Comment No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child", the Committee notes:

"Adolescents who are sexually exploited, including in prostitution and pornography, are exposed to significant health risks, including STDs, HIV/AIDS, unwanted pregnancies, unsafe abortions, violence and psychological distress. They have the right to physical and psychological recovery and social reintegration in an environment that fosters health, self-respect and dignity (art. 39). It is the obligation of States Parties to enact and enforce laws to prohibit all forms of sexual exploitation and related trafficking; to collaborate with other States Parties to eliminate intercountry trafficking; and to provide appropriate health and counselling services to adolescents who have been sexually exploited, making sure that they are treated as victims and not as offenders." *(Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, para. 37)*

The Committee has emphasized the importance of adopting a non-punitive approach to child victims of sexual exploitation, including training on how to investigate complaints in a child-sensitive manner (see above, page 524). The Agenda for Action of the Stockholm World Congress suggests that social, medical and psychological counselling and other support should be provided to child victims and their families; that there should be gender-sensitive training of medical personnel, teachers, social workers, non-governmental organizations and others working to help child victims; that social stigmatization of victims should be prevented and their recovery and reintegration in communities and families should be facilitated; and that where institutionalization is necessary, it should be for the shortest possible period.

The Committee recommended that Uzbekistan improve its rehabilitation and prevention measures as follows:

"... (a) Train law enforcement officials, social workers and prosecutors on how to receive, monitor and investigate complaints, in a child-sensitive manner;
(b) Increase the number of trained professionals providing psychological counselling and other recovery services to victims;
(c) Develop preventive measures that target those soliciting and providing sexual services, such as materials on relevant legislation on the sexual abuse and exploitation of minors as well as on education programmes, including programmes in schools on healthy lifestyles."
(Uzbekistan CRC/C/UZB/CO/2, paras. 67 and 68)

The Yokohama Global Commitment 2001

The statement adopted following the Second World Congress against Commercial Sexual Exploitation of Children (Yokohama, Japan, 17-20 December 2001) begins by reviewing developments since the First World Congress (Stockholm, Sweden, 1996). It reaffirms "as our primary considerations, the protection and promotion of the interests and rights of the child to be protected from all forms of sexual exploitation", and goes on to identify and welcome developments, visible in a number of countries, since 1996. But the statement recognizes that much more needs to be done to protect children globally and expresses concern at the delays in the adoption of needed measures in various parts of the world. The second part of the statement consists of the Global Commitment:

"5. We have come together to:

reiterate the importance and the call for more effective implementation of the Convention on the Rights of the Child by States Parties and related instruments, and underline our belief in the rights of children to be protected from commercial sexual exploitation in the form of child prostitution, child pornography and trafficking of children for sexual purposes;

encourage early ratification of the relevant international instruments, in particular, ILO Convention No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;

reaffirm our commitment to build a culture of respect for all persons based upon the principle of non-discrimination and to eliminate commercial sexual exploitation of children, in particular by sharing the lessons learnt since the First World Congress, and by improving cooperation in this regard;

recommit to the Declaration and Agenda for Action of the First World Congress ('The Stockholm Declaration and Agenda for Action'), and in particular to developing national agendas, strategies or plans of action, designated focal points and comprehensive gender-disaggregated data collection, and effective implementation of measures, including child-rights based laws and law enforcement;

reinforce our efforts against commercial sexual exploitation of children, in particular by addressing root causes that put children at risk of exploitation, such as poverty, inequality, discrimination, persecution, violence, armed conflicts, HIV/AIDS, dysfunctioning families, the demand factor, criminality, and violations of the rights of the child, through comprehensive measures, including improved educational access for children, especially girls, anti-poverty programmes, social support measures, public awareness-raising, physical and psychological recovery and social reintegration of child victims, and action to criminalize the commercial sexual exploitation of children in all its forms and in accordance with the relevant international instruments, while not criminalizing or penalizing the child victims;

emphasize that the way forward is to promote closer networking among key actors to combat the commercial sexual exploitation of children at the international, inter-regional, regional/sub-regional, bilateral, national and local levels, in particular, among communities and the judicial, immigration and police authorities, as well as through initiatives interlinking the young people themselves;

ensure adequate resource allocation to counter commercial sexual exploitation of children, and to promote education and information to protect children from sexual exploitation, including educational and training programmes on the rights of the child addressed to children, parents, law enforcers, service providers and other key actors;

reiterate that an essential way of sustaining global action is through regional/sub-regional and national agendas, strategies or plans of action that build on regional/sub-regional and national monitoring mechanisms and through strengthening and reviewing existing international mechanisms with a monitoring process, to improve their effectiveness as well as the follow-up of their recommendations, and to identify any reforms that may be required;

take adequate measures to address negative aspects of new technologies, in particular, child pornography on the Internet, while recognizing the potential of new technologies for the protection of children from commercial sexual exploitation, through dissemination and exchange of information and networking among partners;

reaffirm the importance of the family and **strengthen** social protection of children, young people and families through awareness-raising campaigns and community-based surveillance/monitoring of commercial sexual exploitation of children; commit ourselves to promoting cooperation at all levels and to combining efforts to eliminate all forms of sexual exploitation and sexual abuse of children worldwide;

declare that the sexual exploitation of children must not be tolerated and **pledge** to act accordingly."

article 34

Bilateral and multilateral measures

One reason why the importance of international cooperation to prevent and combat sexual exploitation of children is recognized is because many forms of exploitation have become transnational, for example sex tourism, trafficking in child prostitutes, and dissemination of child pornography including through the Internet.

The conclusions and recommendations of the International Conference on Combating Child Pornography on the Internet (Vienna, 29 September – 1 October 1999) emphasized the need for a policy of zero tolerance: "This requires clear and strong legislation and effective law enforcement. Our efforts must make it clear to any potential perpetrator that the Internet is no longer an anonymous place for crimes and illegal activities."

The Committee's *Guidelines for Periodic Reports* seeks information on "bilateral, regional and multilateral agreements", including judicial cooperation and cooperation among law enforcement officials. The Agenda for Action, adopted at the Stockholm World Congress in 1996, promoted "better cooperation between countries and international organizations, including regional organizations, and other catalysts which have a key role in eliminating the commercial sexual exploitation of children, including the Committee on the Rights of the Child, UNICEF, ILO, UNESCO, UNDP, WHO, UNAIDS, UNHCR, IOM, the World Bank/IMF, INTERPOL, United Nations Crime Prevention and Criminal Justice Division, UNFPA, the World Tourism Organization, the United Nations Commissioner for Human Rights, the United Nations Centre for Human Rights, the United Nations Commission on Human Rights and its Special Rapporteur on the Sale of Children, and the Working Group on Contemporary Forms of Slavery, each taking guidance from the Agenda for Action in their activities in accordance with their respective mandates..." (A/51/385, p. 5)

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 34, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 34 is relevant to **departments of justice, law enforcement, health, social welfare, and education**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 34 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 34 likely to include the training of **all those working with children and their families, teachers, social and community workers, health workers, police, judges and court officials, and parenting education**)?

• Specific issues in implementing article 34

- ☐ Has the State considered the implications for law, policy and practice of the Declaration and Agenda for Action of the 1996 World Congress against Commercial Sexual Exploitation of Children and the 2001 Yokohama Global Commitment and developed a national agenda for action?
- ☐ Has the State carried out and/or promoted education and information strategies against sexual exploitation of children?
- ☐ Has the State ensured the dissemination of appropriate sex education and other information for children?
- ☐ Has the State established an age or ages below which the child is deemed to be unable to consent to sexual activities and ensured there is no discrimination on grounds of sexual orientation?
- ☐ Has the State defined unlawful sexual activity involving children?

How to use the checklist, *see page XIX*

- ☐ Has the State introduced appropriate legislative, educational and social measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity?
- ☐ Has the State ensured that the child victim of such coercion, inducement or exploitative use is not criminalized?
- ☐ Has the State reviewed all measures to protect children from sexual exploitation to ensure that measures do not further abuse the child in the process of investigation and intervention?

Has the State introduced appropriate legislation and/or other measures to prevent the exploitative use of children

- ☐ in prostitution or other unlawful sexual practices?
- ☐ in pornographic performances and materials?
- ☐ through access to "sex telephones"?

- ☐ Has the State established appropriate procedures to give children effective access to complaints procedures and to the courts in cases involving sexual abuse and exploitation, including within their family?

Has the State ensured appropriate measures to protect particularly vulnerable groups, including

- ☐ children with disabilities?
- ☐ domestic servants?
- ☐ children in institutions, including those whose liberty is restricted?

- ☐ Has the State introduced legislative and/or other measures to provide child witnesses in cases involving sexual exploitation with appropriate support and protection?

In relation to child pornography, is it an offence to

- ☐ possess it?
- ☐ produce it?
- ☐ disseminate it?

- ☐ Has the State reviewed law, policy and practice to ensure appropriate control of child pornography produced and/or disseminated through the Internet and other modern technological means?
- ☐ Has the State introduced legislation and/or other appropriate measures to ensure that its nationals can be prosecuted for unlawful sexual exploitation of children in other countries?
- ☐ Is there sufficient recording and reporting of disaggregated data, and other information concerning sexual exploitation of children, to provide an accurate situation analysis?
- ☐ Has the State acceded to and promoted bilateral and multilateral measures to protect the child from sexual abuse and sexual exploitation?

How to use the checklist, see page XIX

Reminder: **The Convention is indivisible and its articles interdependent. Article 34 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 34 include:

Article 18: parental responsibilities
Article 19: protection from all forms of violence
Article 20: alternative care
Article 22: refugee children
Article 23: children with disabilities
Article 24: health and health care
Article 27: adequate standard of living
Article 28: right to education
Article 32: child labour
Article 33: drug abuse
Article 35: sale, trafficking and abduction
Article 38: armed conflict
Article 39: rehabilitative care for child victims
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Prevention of abduction, sale and trafficking

Text of Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 35 acts as a fail-safe protection for children at risk of abduction, sale or trafficking. Article 11 protects against the illicit "transfer or non-return of children abroad" (usually undertaken by relatives, not for profit); article 21 provides that international adoption must not involve "improper financial gain"; article 32 protects children against exploitative or harmful work; article 33 from involvement in drug trafficking; article 34 from their use in the sex trade; and article 36 from all other forms of exploitation. Article 35 is a safety net to ensure that children are safe from being abducted or procured for these purposes or for any other purpose.

In 2002 the Optional Protocol on the sale of children, child prostitution and child pornography came into force. This requires ratifying States to take measures to criminalize and prosecute all forms of sale of children, and thus reinforces the protection of article 35. ■

Summary

Background

In the initial phases of drafting the Convention on the Rights of the Child, articles 34, 35 and 36 were condensed into one, but the Working Group agreed it would be more useful to tease out the separate strands of child exploitation. Article 35 was introduced because the sale or trafficking of children was wider in scope than that of article 34, which relates to all forms of sexual exploitation or abuse (E/CN.4/1987/25, pp. 15 to 24; Detrick, p. 429).

How does the "abduction of, the sale of or traffic in children" manifest itself? Children can be unlawfully abducted abroad by their natural parents or relatives in disputes over custody in breach of article 11 (see page 143), but article 35 also requires measures to deal with internal abductions within the jurisdiction. In addition, children in poor countries can be sold into the equivalent of slavery, through bonded labour or debt repayment, and they can be trafficked for the purposes of begging, all of which are also violations of article 32 (see page 479). In conditions of war, children can be forced to become soldiers or servants to armed forces (see article 38, page 573). Children can also be trafficked for the purposes of sex – into prostitution or the production of pornography or, less overtly, through forced marriages or traditional practices (see article 34, page 513). Children, particularly babies, are a desirable commodity for adoption: article 21 requires measures to ensure that intercountry adoption "does not result in improper financial gain for those involved in it" (see page 293). There is also an anxiety that children's bodies are being used to provide organs for transplants, in breach of article 6.

Thus article 35 provides a double protection for children: the main forms of child trafficking are dealt with in those different articles, but blanket action on abduction, sale or traffic "for any purpose or in any form" is also required by this article.

In 1992 the Special Rapporteur on the sale of children, child prostitution and child pornography was appointed to review international and national developments and make detailed recommendations; since then three successive Rapporteurs have been appointed. The Rapporteur visits and reports on countries where trafficking is known to occur, as well as making annual reports to the Human Rights Commission (now Human Rights Council) on thematic topics, including: "Demand for sexual services deriving from exploitation" (E/CN.4/2006/67, 2006); "Child pornography on the Internet" (E/CN.4/2005/78, 2005) and "Legal consequences of the sale of children, child prostitution and child pornography, and particularly on the criminalization of child victims and recent national policy and legislative developments to address these concerns" (E/CN.4/2003/79, 2003). These and other reports by the Special Rapporteur are available at www.ohchr.org/english/issues/children/rapporteur/annual.htm.

One initiative on which the Rapporteur was active was the adoption by the United Nations General Assembly of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. This came into force in 2002 (see page 669). The Committee has issued revised detailed guidelines on the information States Parties should provide, much of which is relevant to implementation of article 35 (see page 707). In addition, the *Guidelines for Periodic Reports (Revised 2005)* for the Convention asks States to provide disaggregated data in relation to article 35 on the number of children involved in trafficking for the purpose of sexual exploitation, labour and other purposes; the number who were provided with rehabilitative programmes; the number and percentage of cases that have resulted in sanctions on the perpetrator (and his or her country of orgin); and the number of border and law enforcement officials who have received training on preventing trafficking and respecting the dignity of trafficked children (see page 701).

In 1997 the Secretary-General appointed a Special Representative for children and armed conflict who is mandated to work closely with the Committee on the Rights of the Child and to report annually to the General Assembly and to the Human Rights Council. In 2005 the Special Representative proposed to the Commission on Human Rights (now Council) that the United Nations and national governments should monitor and report on six priority areas of concern, which "constitute especially egregious violations against children". One of the six areas was the abduction of children in armed conflict zones.

There are also a number of other international treaties which address this issue, such as the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery and the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. These have been augmented by conventions and protocols, some specific to children, principally the 1999 ILO Worst Forms of Child Labour Convention (No.182); the Optional

Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (adopted by the General Assembly in 2000) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (also adopted by the General Assembly in 2000). (See Appendices 3 and 4 on pages 759, 692 and 761 and discussion on pages 479 and 659). "Trafficking in persons" is defined in article 3 of this Protocol as follows:

"(a) 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

But where children are concerned, the article goes on to provide: "(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article."

"Sale of children" is defined in article 2 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography as follows:

"Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration."

Abduction does not have to involve remuneration or a commercial motive. According to the Hague Convention on the Civil Aspects of International Child Abduction, "The removal or the retention of a child is to be considered wrongful where it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention." (Article 3)

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, South Africa, September 2001) in its Declaration notes that victims of trafficking are particularly exposed to racism, racial discrimination, xenophobia and related intolerance. It urges States to allocate resources to provide comprehensive programmes designed to rehabilitate victims and to train the relevant officials who deal with victims of trafficking (A/CONF.189/12, Declaration, para. 30; Programme of Action, para. 64).

The outcome document of the United Nations General Assembly's special session on children emphasizes the importance and urgency of the issue, calling on States to:

article 35

"Take necessary action, at all levels, as appropriate, to criminalize and penalize effectively, in conformity with all relevant and applicable international instruments, all forms of sexual exploitation and sexual abuse of children, including within the family or for commercial purposes, child prostitution, paedophilia, child pornography, child sex tourism, trafficking, the sale of children and their organs and engagement in forced child labour and any other form of exploitation, while ensuring that, in the treatment by the criminal justice system of children who are victims, the best interests of the child shall be a primary consideration.

"Monitor and share information regionally and internationally on the cross-border trafficking of children; strengthen the capacity of border and law enforcement officials to stop trafficking and provide or strengthen training for them to respect the dignity, human rights and fundamental freedoms of all those, particularly, women and children who are victims of trafficking.

"Take necessary measures, including through enhanced cooperation between governments, intergovernmental organizations, the private sector and nongovernmental organizations to combat the criminal use of information technologies, including the Internet, for purposes of the sale of children, for child prostitution, child pornography, child sex tourism, paedophilia and other forms of violence and abuse against children and adolescents." (Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, A/S-27/19/Rev.1, paras. 45 to 47)

The Committee's general concerns about abduction

The following sections address the various reasons why children are sold, abducted or trafficked, but one of the most painful aspects of this phenomenon is that parents and others may never know why the child has been taken. The Committee is seriously concerned about States

which do not give sufficient attention to the issue:

"The Committee is concerned at the high number of children who are abducted and sold each year for unknown purposes within and outside Ethiopia. The Committee is deeply concerned at the lack of information in the State Party report on the extent of the problem and the number of children affected." (Ethiopia CRC/C/ETH/CO/3, para. 75)

"While the Committee recognizes the existence of legislative measures to address sexual exploitation and trafficking of children... as well as the training of law enforcement personnel, the Committee is concerned that a general lack of awareness among young people in Latvia, combined with the economic hardships they face, increases their vulnerability." (Latvia CRC/C/LVA/CO/2, para. 58)

The Committee is even more concerned about any suggestion of state complicity:

"While welcoming the recent introduction in the Criminal Code of norms prohibiting the trafficking of human beings, the Committee is concerned that not enough is being done to implement these provisions effectively. The Committee also expresses its concern that protection measures for victims of trafficking of human beings are not fully in place and that reported acts of complicity between traffickers and state officials are not being fully investigated and sanctioned." (Russian Federation CRC/C/RUS/CO/3, para. 80)

The Committee has identified a number of countries as having frighteningly high numbers of trafficked or disappeared children. For example, it noted that in Albania

"... approximately 4,000 children have left the country unaccompanied by their parents" (Albania CRC/C/15/Add.249, para. 66)

and others that act as "transit countries", for example Algeria which acts as the link between Africa and Western Europe. It also expresses its concern about receiving or destination countries which fail to prevent trafficking or to rescue trafficked children.

Child trafficking has arisen through criminal gangs identifying and supplying an illegal demand, so that children are treated as a commercial product like narcotic drugs. However the Committee also draws attention to the conditions in children's lives which make such criminality possible:

"... The Committee notes with grave concern that certain groups of children are at a particularly higher risk of being sold and trafficked, including girls, internally displaced children, street children, orphans, children from rural areas, refugee children and children belonging to more vulnerable castes..." (Nepal CRC/C/15/Add.261, para. 95)

"... The Committee regrets the inadequate legal framework for the prevention and criminalization of sexual exploitation and trafficking of children, and that victims are criminalized and sentenced to detention. In addition, concern is expressed about existing risk factors contributing to trafficking activities, such as poverty, early marriages and sexual abuse." (Lebanon CRC/C/LBN/CO/3, para. 81)

States that have high levels of trafficking are recommended to take a range of measures, as for example the Committee told Benin:

"The Committee recommends that the State Party further strengthen its efforts to identify, prevent and combat trafficking in children for sexual and other exploitative purposes, including by allocating sufficient resources to these efforts. Furthermore, the Committee recommends that the State Party:
(a) Improve knowledge, data collection mechanisms and the causal analysis of problems related to child protection, including trafficking, at the central, departmental and local authority levels;
(b) Develop and implement a programme for prevention of and protection against trafficking within the framework of the National Policy and Strategy on Child Protection;
(c) Strictly enforce all legislation related to trafficking and publish information on the phenomenon, including statistics;
(d) Strengthen community-based mechanisms to prevent and monitor child trafficking and exploitation, including the local committees, and, at the same time, undertake preventive actions to improve living conditions and economic opportunities, in the zones of departure as well as high-risk zones paying particular attention to economically disadvantaged families;
(e) Continue to pursue efforts for transnational collaboration on combating child trafficking and the establishment and implementation of agreements between neighbouring countries;
(f) Provide adequate and systematic training to all professional groups concerned, in particular law enforcement officials and border guards;
(g) Launch awareness-raising campaigns for children, parents and other caregivers, in order to prevent trafficking, sexual exploitation and pornography involving children, and sensitize officials working with and for victims of trafficking;
(h) Establish a proper monitoring system of children when returned to their families; and
(i) Provide, in partnership with stakeholders, adequate programmes of assistance, psycho-

social rehabilitation and social reintegration for sexually exploited and/or trafficked children, in accordance with the Declaration and Agenda for Action and the Global Commitment adopted at the First and Second World Congresses against Commercial Sexual Exploitation of Children." (Benin CRC/C/BEN/CO/2, para. 72)

Trafficking and child labour

The Committee has raised concern about the trafficking of children for the purposes of labour, for example in the Sudan, Bangladesh and France:

"The Committee ... remains concerned that the State Party's legislation does not adequately prohibit slavery or sanction those engaged in it and that thousands of children have been abducted and enslaved in the context of the armed conflict as well as for commercial gain (i.e. sold as servants, agricultural labourers and concubines, or forcibly recruited as soldiers)." (Sudan CRC/C/15/Add.190, para. 61)

"The Committee is deeply concerned at the high incidence of trafficking in children for purposes of prostitution, domestic service and to serve as camel jockeys and at the lack of long-term, concentrated efforts on the part of the State Party to combat this phenomenon." (Bangladesh CRC/C/15/Add.221, para. 73)

"The Committee welcomes the legislative and other efforts aimed at providing protection of children from economic exploitation. However, the Committee is concerned that illegal networks of forced labour continue to operate and that foreign children fall victims of networks which are not countered vigorously enough." (France CRC/C/15/Add.240, para. 52)

These are only examples. In many parts of the developing world, children are effectively sold into slavery, often as domestic servants. Children are also used to beg, sometimes having been deliberately deformed. There is also evidence that exploiting children for the purposes of begging is undertaken as a mass commercial enterprise.

In 1999 the International Labour Organization adopted the Worst Forms of Child Labour Convention (No.182) which requires ratifying States to take immediate, effective and time-bound measures, including enacting penal sanctions, to implement the most abhorrent and unacceptable forms of child labour. The definition of these under the Convention is:

"(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children." (Article 3)

Thus this ILO Convention directly impacts on the effective implementation of article 35 (see article 32, page 479 for further information on this aspect of child trafficking).

Trafficking and adoption

As discussed under article 21, the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption is now the main international tool for preventing the international trafficking of children for the purposes of adoption. It prohibits improper financial gain from intercountry adoption, specifying that "only costs and expenses, including reasonable professional fees ... may be charged or paid" (article 32). In addition the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography includes within its scope: "Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption" (article 3(ii)).

There are still reports of intercountry adoption sales, particularly in South and Central America and Eastern Europe, as buyers from the Western world place a premium on Caucasian children; but it is a global phenomenon because the number of hopeful adoptive couples tends to exceed the number of healthy babies available for adoption. And, although intercountry adoptions are the prime source of profit, the clandestine selling of children for adoption also operates internally within many jurisdictions.

Some countries have taken steps to prohibit intercountry adoptions or limit them to cases of abandoned or institutionalized children only. However, such measures, though designed to prevent trafficking and to uphold the child's rights under articles 7, 8 and 10 (to know and be cared for by parents, to preservation of identity and not to be separated from parents), appear to be a less flexible means of securing the best interests of individual children than those provided by the Hague Convention.

The Committee raised concerns about trafficking children for adoption with countries, for example with Albania:

"The Committee welcomes the ratification by the State Party of the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and the setting up of the Albanian Committee for Adoption, as well as the priority given to domestic solutions. However, it remains concerned at the occurrence of intercountry adoptions, despite the efforts of the State Party to counter such practices, which are not made through the competent authority or accredited body but through individual channels, including cases of sale of children for 'adoption'." *(Albania CRC/C/15/Add.249, para. 46)*

In addition, it has raised concerns about children who are "informally" adopted in order to employ them as domestic servants, effectively enslaving them:

"The Committee is concerned at the high incidence of informal adoption which lacks the guarantees that the best interests of the child are taken into account and which may lead, inter alia, *to the use of young informally adopted girls as domestic servants."* *(Papua New Guinea CRC/C/15/Add.229, para. 41)*

"Given the significant number of Nepalese children who are adopted by foreigners and in the context of the current armed conflict in the State Party, the Committee is concerned at the lack of a clear policy and appropriate legislation on intercountry adoption, which results in various practices, such as trafficking and smuggling of babies. The Committee is particularly concerned about the absence of due judicial process, including technical assessment of the capacity of the parents or guardians, in cases involving termination of the parental responsibility. The Committee also expresses concern regarding the practice of the so-called informal adoption, which may entail exploitation of children as domestic servants." *(Nepal CRC/C/15/Add.261, para. 53)*

Trafficking and sexual exploitation

Article 34 addresses children's right to protection from all forms of sexual exploitation, including prostitution or the use of children in pornography; the Optional Protocol on the sale of children, child prostitution and child pornography has added further protections (see pages 513 and 669).

Child prostitution and child pornography are increasingly profitable businesses in many parts of the world. Naturally this is of deep concern to the Committee, for example:

"While noting that the State Party does not consider that problems relating to trafficking or other forms of sexual exploitation exist, the Committee remains concerned that such problems may remain 'hidden' and that the authorities may be unaware of them. In particular, the Committee refers to the concerns expressed by the Special Rapporteur on the sale of children, child prostitution and child pornography that Cyprus is being used as a transit point for trafficking of young women, including minors." *(Cyprus CRC/C/15/Add.205, para. 55)*

"The Committee is concerned about reports of trafficking and sale of persons under 18 years of age, particularly young girls from rural areas, facilitated by 'temporary marriages' or 'siqeh' – marriages which last from 1 hour to 99 years. It is also concerned at reports of the trafficking of such persons from Afghanistan to Iran, who are apparently sold or sent by their families in Afghanistan for exploitation, including cheap labour." *(Islamic Republic of Iran CRC/C/15/Add.254, para. 70)*

"The Committee welcomes the measures taken by the State Party to combat sexual exploitation and trafficking of children... However, the Committee is concerned about the information that a very high number of children – 500,000 according to the data – are victims of sexual exploitation and violence." *(Peru CRC/C/PER/CO/3, para. 67)*

"Despite the State Party's intensified efforts to combat trafficking in children... the Committee expresses its deep concern that Thailand is a source, transit and destination country for trafficking in children for the purposes of sexual exploitation and forced labour. It notes with concern the reported cases of internal trafficking, such as trafficking of girls belonging to indigenous and tribal peoples from north to south. It further notes with concern the increased risk of trafficking and exploitation faced by children of vulnerable groups, as well as the deportation of child trafficking victims. Furthermore, weak law enforcement and implementation of anti-trafficking measures in the State Party give cause for serious concern." *(Thailand CRC/C/THA/CO/2, para. 73)*

The Commission on Human Rights, in its 1992 Programmes of Action for the prevention of the sale of children, child prostitution and child pornography, tackled these issues comprehensively, making recommendations on public awareness, social support and education as well as encouraging measures directly impacting on the perpetrators and victims of child trafficking. Many of these recommendations made their way into the Optional Protocol on the sale of children, child prostitution and child pornography (see page 669).

Trafficking and armed conflict

Article 38 of the Convention on the Rights of the Child covers armed conflict and children (page 573). While some of the world's "child soldiers" are volunteers, many are reluctant or forced recruits, a serious form of abduction and forced labour. Such acts may be perpetrated by guerrilla forces, in which case the ratifying State may have limited options to intervene, as for example in Uganda:

"The Committee remains deeply concerned at the continued abduction by the Lord's Resistance Army (LRA) of children to be used as child soldiers, sex slaves, and to carry goods and weapons. It is further concerned at the inhuman and degrading treatment of the abducted children.

"The Committee urges the State Party to do everything possible to prevent the abduction of children by the LRA and to rescue those who are still being held. The Committee also urges the State Party to continue to strengthen its efforts, in close cooperation with national and international NGOs and United Nations bodies such as UNICEF, to demobilize child soldiers, to provide them with adequate (short-term) shelter and to support their recovery, reunification with their families and reintegration in their communities. It further recommends that the State Party pay special attention to the needs of girls, who have often been the victims of sexual abuse, and place particular emphasis on access to education that is tailored to their ages." (Uganda CRC/C/UGA/CO/2, paras. 66 and 67)

Sometimes the State compulsorily conscripts children, which has been identified under ILO Convention (No.182) as one of the worst forms of child labour (article 3) and is arguably an abduction of children, contrary to article 35 of the Convention on the Rights of the Child. And sometimes States are weak in their interventions, punitive to the victims or even complicit with the perpetrators:

"The Committee… expresses its extremely deep consternation at the very high number of children who have been forcibly recruited into armed forces and armed groups by all parties involved in the conflict, including children as young as nine years old…" (Liberia CRC/C/15/Add.236, para. 58)

"… the Committee considers that considerable measures for demobilized and captured child soldiers remain lacking. In particular, the Committee is concerned over:
(a) large-scale recruitment of children by illegal armed groups for combat purposes and also as sex slaves;
(b) interrogation of captured and demobilized child soldiers and delays by the military in handing them over to civilian authorities in compliance with the time frame of maximum 36 hours stipulated in the national legislation;
(c) the use of children by the army for intelligence purposes;
(d) inadequate social reintegration, rehabilitation and reparations available for demobilized child soldiers;
(e) the number of children who have become victims of landmines;
(f) the failure of the current legal framework for the ongoing negotiation with the paramilitaries to take into account the basic principles of truth, justice and reparations for the victims;
(g) general lack of adequate transparency in consideration of aspects relating to children in the negotiations with illegal armed groups, resulting in continuous impunity for those responsible for recruitment of child soldiers." (Colombia CRC/C/COL/CO/3, para. 80)

The ILO Worst Forms of Child Labour Convention, 1999 (No.182) includes forced or compulsory recruitment of children under 18 for use in armed conflict within its scope, and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict requires that under-18-year-olds are not compulsorily recruited into the armed forces, and those that are voluntary recruits do not take a direct part in hostilities. States should also take "all feasible measures" to ensure that armed groups that are not part of the State do not recruit children or use them in hostilities (see page 659).

Trafficking and organ transplants

Given the urgent demand within wealthy nations for children's organs for transplants and the total vulnerability of many children in developing nations, the likelihood of a trade in children's organs is high. On the other hand, given the substantial number of medical personnel needed for a successful transplant, it would be difficult to keep such cases secret.

The Special Rapporteur on the sale of children, child prostitution and child pornography reported to the Commission on Human Rights: "The issue of children sold for organ transplantation remains the most sensitive aspect of the Special Rapporteur's mandate. While evidence abounds concerning a trade in adult organs in various parts of the globe, the search for proof concerning a trade in children's organs poses greater difficulties. It should be noted that during the Special Rapporteur's mission to Nepal in 1993, Nepali police informed him of a recent case concerning children trafficked into India for this illicit purpose. There is thus mounting evidence of a market for children's organs." (E/CN.4/1994/84, para. 100)

Allegations and suspicion continue to surface in the world's media and there certainly are cases of poor adults selling their own kidneys for transplantation, though there appears to be no hard evidence of traffic in children's organs. The World Health Organization (WHO) has examined this issue, commenting: "The use of unrelated living donors raises the possibility of the poor especially in developing countries, where potential unrelated donors are subject to temptation to sell their organs ... While organ and tissue donation for altruism or love may be ethically acceptable, the donation for profit should be deprecated." (*Human Organ Transplantation: A report on developments under the auspices of the World Health Organization (1987-1991*), WHO, Geneva, 1991) The WHO Guiding Principles on Human Organ Transplantation recommends that "no organ shall be removed from the body of a living minor for the purpose of transplantation. Exceptions may be made under national law in the case of regenerative tissue" (Principle 4). This exception would allow for transplants of bone marrow, but would preclude, for example, a child donating one of his kidneys or lungs to a sibling (although under Principle 3, adults are permitted to donate organs to genetically related recipients). Principle 5 prohibits commercial transactions in relation to organ transplants.

The Optional Protocol on the sale of children, child prostitution and child pornography specifically includes "Transfer of organs of the child for profit" as an act that the ratifying State must criminalize (article 3).

Victims, not criminals

When adopting or strengthening laws to penalize the trafficking of children, it is obviously important not to criminalize children themselves. They are the victims not the criminals. Similarly where children are trafficked, particularly when they find themselves in an unfamiliar country, it is important that first priority is given to treating them humanely. Article 39 of the Convention on the Rights of the Child requires States to take all appropriate measures to promote the recovery and social reintegration of child victims (page 589).

Both the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (adopted by the General Assembly in 2000) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (also adopted by the General Assembly in 2000) require States Parties to protect and assist the victims of sale and trafficking. The former Protocol requires the child's special needs to be recognized, giving such child victims full information, ensuring that their needs and views are considered and protecting their privacy and safety as well as providing them with specialist support for social reintegration and recovery. The latter Protocol reiterates these safeguards, and additionally requires that States receiving children who have been trafficked across borders should provide them with appropriate education, housing and care, and ensure that they will be safe if they are returned to their country of origin.

In its General Comment No. 6 on "Treatment of unaccompanied and separated children outside their country of origin", the Committee notes:

"Unaccompanied or separated children in a country outside their country of origin are particularly vulnerable to exploitation and abuse. Girls are at particular risk of being trafficked, including for purposes of sexual exploitation...

"Trafficking of such a child, or 're-trafficking' in cases where a child was already a victim of trafficking, is one of many dangers faced by unaccompanied or separated children. Trafficking in children is a threat to the fulfilment of their right to life, survival and development (art. 6). In accordance with article 35 of the Convention, States Parties should take appropriate measures to prevent such trafficking. Necessary measures include identifying unaccompanied and separated children; regularly inquiring as to their whereabouts; and conducting information campaigns that are age appropriate, gender sensitive and in a language and medium that is understandable to the child. Adequate legislation should also be passed and effective mechanisms of enforcement established with respect to labour regulations and border crossing.

"Risks are also great for a child who has already been a victim of trafficking, resulting in the status of being unaccompanied or separated. Such children should not be penalized and should receive assistance as victims of a serious human rights violation. Some trafficked children may be eligible for refugee status under the 1951 Convention, and States should ensure that separated and unaccompanied trafficked children who wish to seek asylum or in relation to whom there is otherwise indication that international protection needs exist, have access to asylum procedures. Children who are at risk of being re-trafficked should not be returned to their country of origin unless it is in their best interests and appropriate measures for their protection have been taken. States should

consider complementary forms of protection for trafficked children when return is not in their best interests." (Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, paras. 50, 52 and 53)

The Committee has encouraged both prevention and rehabilitation in this area, for example in its observations to Colombia:

"The Committee... is concerned over the high and rising number of children who are victims of sexual exploitation and trafficking, and over information indicating that they risk being criminalized. It further notes with concern the increased risk of sexual exploitation and trafficking faced by children of vulnerable groups, such as the internally displaced and children living in poverty. Furthermore, unequal law enforcement and lack of effective implementation of anti-trafficking measures in the State Party give cause for serious concern.
"The Committee recommends that the State Party:
(a) undertake further in-depth studies on the sexual exploitation of children in order to assess its scope and root causes and enable effective monitoring and measures to prevent, combat and eliminate it;
(b) include adequate reference to child labour in the reformed Minor's Code and implement a national plan of action against sexual exploitation and trafficking of children, taking into account the Declaration and Agenda for Action and the Global Commitment adopted at the 1996 and 2001 World Congresses against Commercial Sexual Exploitation of Children;
(c) provide adequate programmes of assistance and reintegration for sexually exploited and/or trafficked children and in particular ensure that they are not criminalized;
(d) take the necessary and effective implementation of measures and ensures equal enforcement of the law to avoid impunity;
(e) train law enforcement officials, social workers and prosecutors on how to receive, monitor, investigate and prosecute cases, in a child-sensitive manner that respects the privacy of the victim;
(f) seek further technical assistance from among others, UNICEF and ILO-IPEC (International Programme for the Elimination of Child Labour)." (Colombia CRC/C/COL/CO/3, paras. 86 and 87)

In 2005 the United Nations Economic and Social Council adopted the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (resolution 2005/20). These Guidelines require child victims and witnesses to be given effective assistance, be treated with dignity and compassion, to be fully informed and to have their views taken into account, to have their safety and privacy protected and to be rehabilitated and, where possible, offered reparation.

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 35, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 35 is relevant to **departments of justice, foreign affairs, home affairs, labour, education, social welfare and health**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 35 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 35 likely to include the training of **police, social workers, adoption agencies staff and health personnel**)?

• Specific issues in implementing article 35

- ☐ Have legal and administrative measures been adopted to ensure that children abducted within the jurisdiction are found as speedily as possible and returned?

Has the State ratified or acceded to:

- ☐ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000)?
- ☐ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)?
- ☐ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000)?
- ☐ ILO Worst Forms of Child Labour Convention (1999)?
- ☐ Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption (1993)?

How to use the checklist, *see page XIX*

- ☐ Hague Convention on Civil Aspects of International Child Abduction (1980)?
- ☐ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)?
- ☐ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)?

- ☐ Are all forms of the sale or trafficking of children illegal, including when perpetrated by parents?
- ☐ Have legal and administrative measures been adopted to ensure that children cannot be sold into any form of bonded labour?
- ☐ When bonded labour is being abolished, are measures taken to nullify any debts that have led to children entering such labour?
- ☐ Is the use of children for the purpose of begging an unlawful activity?
- ☐ Does the law prohibit any form of improper financial gain from intercountry adoption?
- ☐ Do all relevant state agencies, in particular the police and welfare services, cooperate internationally in identifying and tracing all forms of cross-border trafficking in children?
- ☐ Are measures taken to ensure that children who are victims of cross-border trafficking can return safely and lawfully to their country of origin?
- ☐ Is there a national data base of both missing children and known offenders in child trafficking?
- ☐ Are measures adopted to assist the prosecution of those engaged in child trafficking outside the jurisdiction?
- ☐ Does the law prohibit the sale of organs from any living child (save for regenerative tissue)?
- ☐ Is it unlawful to compulsorily conscript a child (under 18 years of age) into the armed services?
- ☐ Are child victims of abduction, sale or trafficking treated humanely as victims, not criminals, and provided with all appropriate forms of support and assistance?
- ☐ Are child victims of abduction, sale or trafficking treated humanely as victims, not criminals, and provided with all appropriate forms of support and assistance?
- ☐ Are children's views on the most appropriate measures for preventing their abduction, sale and traffic given due weight?

How to use the checklist, *see page XIX*

Reminder: **The Convention is indivisible and its articles interdependent. Article 35 should not be considered in isolation.**

Particular regard should be paid to: The other general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 35 include:

Article 8: preservation of child's identity
Article 11: protection from illicit transfer and non-return
Article 16: protection from arbitrary interference in privacy, family and home
Article 20: children without families
Article 21: adoption
Article 32: child labour
Article 33: drug abuse and trafficking
Article 34: sexual exploitation
Article 36: other forms of exploitation
Article 39: rehabilitative care
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Protection from other forms of exploitation

Text of Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

In drafting the Convention, article 36 was introduced to ensure that the "social" exploitation of children was recognized, along with their sexual and economic exploitation, though examples of what was meant by social exploitation were not provided. Articles 11 (illicit transfer and non-return of children), 21 (adoption), 32 (employment), 33 (drug trafficking), 34 (sexual exploitation), 35 (abduction, sale and trafficking) and 38 (armed conflict) address the many ways in which children are exploited by adults. Article 36 is thus a safety net protection to cover "all other forms of exploitation".

The Committee has not as yet raised any specific concerns under this article. Forms of exploitation not addressed under other articles include the exploitation of gifted children, children used in criminal activities, the exploitation of children in political activities (for example in violent demonstrations), the exploitation of children by the media and the exploitation of children by researchers or for the purposes of medical or scientific experimentation. ■

Summary

Gifted children

Children with talents in competitive sports, games, performing arts and so forth can have these talents developed by families, the media, businesses and state authorities at the expense of their overall physical and mental development. Regulations relating to child labour often exclude "voluntary" activities such as these and therefore may not be monitored by child welfare agencies.

The media

As discussed in relation to articles 16 (page 203) and 17 (page 217), children can be exploited by the media, for example by identifying child victims or child offenders, or by securing performances by children without their informed consent which are potentially harmful to their development. The Committee commented, in relation to its Day of General Discussion on "The child and the media":

"In their reporting, the media give an 'image' of the child; they reflect and influence perceptions about who children are and how they behave. This image could create and convey respect for young people; however, it could also spread prejudices and stereotypes which may have a negative influence on public opinion and politicians. Nuanced and well-informed reporting is to the benefit of the rights of the child.

"It is important that the media themselves do not abuse children. The integrity of the child should be protected in reporting about, for instance, involvement in criminal activities, sexual abuse and family problems. Fortunately, the media in some countries have voluntarily agreed to respect guidelines which offer such protection of the privacy of the child; however, such ethical standards are not always adhered to." *(Committee on the Rights of the Child, Report on the eleventh session, January 1996, CRC/C/50, p. 80)*

Research and experimentation

Children can also be exploited by researchers or experimenters, for example by breaches of their privacy or by requiring them to undertake tasks that breach their rights or are disrespectful of their human dignity. Article 7 of the International Covenant on Civil and Political Rights expressly prohibits medical or scientific experimentation without free consent. As discussed under article 37 (page 547), the Human Rights Committee states in a General Comment that this was particularly important to anyone "not capable of giving a valid consent" or who was in any form of detention or imprisonment (Human Rights Committee, General Comment No. 20, 1992, HRI/GEN/1/Rev.8, para. 7, p. 191). The Convention on the Rights of Persons with Disabilities, adopted in December 2006, also states that "no one shall be subjected without his or her free consent to medical or scientific experimentation" (article 15(1)).

The Convention on the Rights of the Child does not address this issue, although the question of the "free consent" of children to research or medical or social experimentation is even more problematic than that of adults. It would be wrong to outlaw all forms of experimentation on children, since some experimental forms of treatment may offer children their only hope of cure and it is argued that medical experimentation is a necessary part of medical progress. The Council for International Organizations of Medical Sciences has issued *International Ethical Guidelines for Biomedical Research Involving Human Subjects* which includes guidelines on when and how children may be the subject of research.

Where older children are involved, the issue also relates to their civil rights under the Convention, for example to be heard, to freedom of expression and of association, and to respect for their "evolving capacities". It is reasonable to assume that children competent to determine medical treatment or surgery will also be competent to consent to participation in research or medical experimentation. States should ensure that all research and experimentation involving children conforms to a mandatory ethical code underpinned by statute. The Committee's General Comment No. 3 on "HIV/AIDS and the rights of the child" calls on States to support research into this subject but cautions that

"... children do not serve as research subjects until an intervention has already been thoroughly tested on adults. Rights and ethical concerns have arisen in relation to HIV/AIDS biomedical research, HIV/ADS operations, and social, cultural and behavioural research. Children have been subjected to unnecessary or inappropriately designed research with little or no voice to either refuse or consent to participation. In line with the child's evolving capacities, consent of the child should be sought and consent may be sought from parents or guardians if necessary, but in all cases consent must be based on full disclosure of the risks and benefits of research to the child." *(Committee on the Rights of the Child, General Comment No. 3, 2003, CRC/GC/2003/3, para. 29)*

States should also take measures for the rehabilitation of children harmed by any of these "other" forms of exploitation, in accordance with article 39.

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

article 36

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 36, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 36 is likely to involve **departments of health, social welfare, labour, media and education**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole).

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 36 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 36 likely to include the training of **media producers, employment officers, social workers, researchers, medical personnel and scientists**)?

• Specific issues in implementing article 36

- ☐ Are legal and administrative mechanisms in place to ensure that children are protected from all forms of exploitation?
- ☐ Are welfare agencies empowered to intervene when there is concern that children are undertaking activities, for whatever reason, which impair their overall physical, mental, emotional, spiritual, moral and social development?
- ☐ Do measures prevent the exploitation of children by the media?
- ☐ Do measures prevent the use of children for all forms of research, including medical or scientific experimentation, unless appropriate consents have been obtained from the child and/or child's parents or legal guardians?
- ☐ Is all research and experimentation involving children regulated by a mandatory code of ethical practice?
- ☐ Are measures taken to provide rehabilitative services for children who have suffered from any form of exploitation covered by this article?

How to use the checklist, *see page XIX*

Reminder: **The Convention is indivisible and its articles interdependent. Article 36 should not be considered in isolation.**

Particular regard should be paid to: The other general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 36 include:

Article 16: protection from arbitrary interference in privacy, family and home
Article 17: responsibilities of the media
Article 32: child labour
Article 34: sexual exploitation of children
Article 35: abduction, sale and trafficking of children
Article 39: rehabilitative care
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Torture, degrading treatment and deprivation of liberty

Text of Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Summary

Article 37 of the Convention on the Rights of the Child provides the child with the right to be protected from

- torture;
- other cruel, inhuman or degrading treatment or punishment;
- capital punishment;
- life imprisonment without possibility of release;
- unlawful or arbitrary deprivation of liberty.

The article sets out conditions for any arrest, detention or imprisonment of the child, which shall be

- in conformity with the law;
- used only as a measure of last resort; and
- for the shortest possible time.

And the article sets out further conditions for the treatment of any child deprived of liberty:

- to be treated with humanity and respect for the inherent dignity of the human person;
- in a manner which takes into account the needs of persons of his or her age;
- to be separated from adults unless it is considered in the child's best interest not to do so;
- to maintain contact with his or her family, through correspondence and visits, save in exceptional circumstances;
- to have the right to prompt access to legal and other appropriate assistance;
- to have the right to challenge the legality of the deprivation of liberty before a court or other competent, independent and impartial authority;
- to have the right to a prompt decision on such action.

The Committee continues to advocate comprehensive reform of the juvenile justice system to most States whose reports it examines, citing articles 37, 39 and 40 and the United Nations rules and guidelines on juvenile justice. In 2007 it adopted General Comment No. 10 on "Children's rights in Juvenile Justice" (CRC/C/GC/10).

The provisions in article 37 on protection from torture and cruel, inhuman or degrading treatment or punishment are absolute provisions, requiring the State to protect children wherever they are. The provisions relating to the restriction of liberty do not just cover children in trouble with the law (in many States restriction of the liberty of children is permitted for reasons not related to criminal offences – "welfare", mental health and in relation to asylum seeking and immigration). Article 39 provides an obligation to promote the recovery and reintegration of child victims of torture and other cruel, inhuman or degrading treatment or punishment (see page 589). ■

United Nations rules and guidelines on juvenile justice

The Committee, in its examination of States Parties' reports and in other comments, has indicated that it regards the United Nations rules and guidelines relating to juvenile justice as providing relevant detailed standards for the implementation of article 37 (the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the "Beijing Rules" (referred to in the Preamble to the Convention); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty; and the United Nations Guidelines for the Prevention of Juvenile Delinquency, the Riyadh Guidelines).

The Committee has also referred to the Guidelines for Action on Children in the Criminal Justice System, prepared at an expert group meeting in Vienna in February 1997 (Economic and Social Council resolution 1997/30, Annex) and more recently to the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, 10 June 2005).

"No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment"

Paragraph (a) of article 37 emphasizes that the absolute prohibition on torture, and cruel, inhuman or degrading treatment or punishment, upheld for everyone in the Universal Declaration of Human Rights (article 5) and the International Covenant on Civil and Political Rights (article 7), and also in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, applies equally to children. And it should be underlined that this prohibition applies to all children wherever they are.

The Committee on the Rights of the Child requires article 37(a) of the Convention on the Rights of the Child to be reflected in national legislation as applying to children. The Committee noted to Costa Rica, for example:

"Although the Committee is aware that the State Party's domestic legislation has included the right of the child to physical integrity (Children and Adolescents Code, art. 24) and that no cases of torture of children have been reported in the State Party, concern is expressed at the lack of explicit legislation prohibiting the use of torture and that no sanction is provided in the legislation for those responsible for torture. In the light of article 37(a), the Committee recommends that the State Party include a provision in its domestic legislation prohibiting children from being subjected to torture and establishing appropriate sanctions against the perpetrators of torture." *(Costa Rica CRC/C/15/Add.117, para. 18)*

It followed this up when it examined Costa Rica's Third Report:

"While taking note that a bill prohibiting and penalizing torture is being examined by the Legislative Assembly, the Committee is concerned at the fact that the use of torture, in particular on children, is still not

formally prohibited and criminalized in the Penal Code. "The Committee reiterates its recommendation that the State Party take all necessary measures to ensure the prohibition and penalization of torture in its legislation." (Costa Rica CRC/C/15/Add.266, paras. 29 and 30)

The Committee proposes accession to the Convention against Torture and refers on occasion to observations of the Committee against Torture. The Committee has expressed grave concern at reports of torture and other inhuman or degrading treatment and punishment, in some cases in the context of armed conflict. For example:

"The Committee expresses its grave concern over the reported massive occurrence of torture and other cruel, inhuman or degrading treatment or punishment, including amputations and mutilations, committed against children.
"Recognizing that the majority of these acts were committed in the context of the armed conflict, and with a view to achieving reconciliation and prevention, the Committee urges the State Party to use the truth and reconciliation Commission process to raise discussion on such acts. The Committee, in addition, urges the State Party to undertake measures which will ensure that such acts will, in the future, receive an appropriate response through the judicial process." (Sierra Leone CRC/C/15/Add.116, paras. 44 and 45)

"The Committee is seriously concerned that children continue to be victims of torture, cruel and degrading treatment. The Committee notes that although members of illegal armed groups bear primary responsibility, state agents including members of the military are also implicated. The Committee is especially concerned over the situation in rural areas where children are at risk as a consequence of the ongoing internal armed conflict. In particular, the Committee expresses concern regarding the increasing number of girls who are subjected to sexual violence and is disturbed by numerous reports of rapes committed by members of the military. The Committee is also concerned about other forms of torture and cruel, inhuman and degrading treatment by law enforcement officials, including in detention facilities, and also over abuses in institutional care.
"The Committee urges the State Party to take effective measures to protect children from torture and other cruel, inhuman or degrading treatment. The Committee emphasizes the urgent need to investigate and sanction all reported cases, committed by the military, law enforcement officials or any person acting in an official capacity, in order to break the pervasive cycle of impunity of serious human rights violations. The Committee recommends that the State Party ensures that all child victims of torture, cruel and degrading treatment are provided access to physical and psychological recovery and social reintegration as well as compensation, giving due consideration to the obligations enshrined in articles 38 and 39 of the Convention." (Colombia CRC/C/COL/CO/3, paras. 50 and 51)

"The Committee notes that the Constitution of the Philippines prohibits torture and that the provisions of the Child and Youth Welfare Code… provide protection for children against torture and ill-treatment and that all hospitals, clinics, related institutions and private physicians are obliged to report in writing all cases of torture and ill-treatment of children. Nevertheless, the Committee is deeply concerned at a number of reported cases of torture, inhuman and degrading treatment of children, particularly for children in detention. The Committee reiterates its previous recommendation on prohibiting and criminalizing torture by law and it is of the view that existing legislation does not provide children with an adequate level of protection against torture and ill-treatment.
"… the Committee urges the State Party to review its legislation in order to provide children with better protection against torture and ill-treatment in the home and in all public and private institutions and to criminalize torture by law. The Committee recommends that the State Party investigate and prosecute all cases of torture and ill-treatment of children, ensuring that the abused child is not victimized in legal proceedings and that his/her privacy is protected. The State Party should ensure that child victims are provided with appropriate services for care, recovery and reintegration…" (Philippines CRC/C/15/Add.259, paras. 38 and 39)

"… the Committee is deeply concerned at the numerous reports of torture and ill-treatment of persons under the age of 18 years, and the reportedly insufficient efforts by the State Party to investigate allegations of torture and prosecute the alleged perpetrators. The Committee is also concerned at the definition of torture in the State Party's Criminal Code, which seems to allow for various interpretations by the judiciary and the law enforcement authorities.
"The Committee urges the State Party:
(a) To amend the relevant provisions of its Criminal Code in order to ensure a consistent interpretation of the definition of torture by the judiciary and the law enforcement authorities, as recommended by the Committee against Torture and the Human Rights Committee in 2002 and 2005, respectively (CAT/C/CR/28/7 and CCPR/CO/83/UZB);

(b) To undertake systematic training programmes at the national and local level, addressed to all professionals working with and for children ..., and the Mahalla Committees, on prevention of and protection against torture and other forms of ill-treatment;
(c) To investigate the allegations of torture and ill-treatment of persons under 18, and take all measures to bring the alleged perpetrators to justice;
(d) To implement the National Plan of Action for the implementation of the Convention against Torture and pay particular attention to measures related to children." (Uzbekistan CRC/C/UZB/CO/2, paras. 36 and 37)

The Committee has also expressed concern at allegations of torture and inhuman or degrading treatment of children in detention and on the streets, by police, security forces, teachers and within the family. The Committee has proposed formal investigations of any allegations of torture and that perpetrators should be brought to trial (by civilian courts) and if found guilty, punished.

The Committee has made it clear that any statements made as a result of torture or other cruel, inhuman or degrading treatment cannot be accepted as evidence (General Comment No. 10 on "Children's rights in Juvenile Justice", para. 23h). For example, it proposed that Turkmenistan should

"... Ensure that any statement which is established to have been made as a result of violence and or coercion would be qualified by law as inadmissible evidence in any proceedings;..." (Turkmenistan CRC/C/TKM/CO/1, para. 70(d))

Other international instruments

In 1975, the General Assembly adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX), 9 December 1975, Annex). The provisions of the Declaration formed the basis for the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by General Assembly resolution 39/46, 10 December 1984). It defines torture, for its purposes, as meaning "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions." (Article 1)

The Convention established the Committee against Torture, which oversees implementation of the Convention, and seeks to resolve cases of alleged torture (and other cruel, inhuman or degrading treatment) brought to its notice. In 2002 the United Nations General Assembly adopted the Optional Protocol to the Convention, which came into force in June 2006; its objective is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. The Optional Protocol creates a Subcommittee on Prevention and allows in-country inspections of places of detention to be undertaken in collaboration with national institutions. Under article 3 of the Protocol, each State Party is required to set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture, etc., known in the Protocol as the national preventive mechanism (for further information see www.ohchr.org).

In addition, the Commission on Human Rights – now Human Rights Council – appointed a Special Rapporteur on Torture in 1985. The mandate includes: transmitting urgent appeals to States about individuals reported to be at risk of torture, as well as communications on past alleged cases of torture; undertaking fact-finding country visits; and submitting annual reports on activities, the mandate and methods of work to the Human Rights Council and the General Assembly.

The Human Rights Committee has adopted two General Comments on article 7 of the International Covenant on Civil and Political Rights ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."): first in 1982 (Human Rights Committee, General Comment No. 7, 1982, HRI/GEN/1/Rev.8, pp. 168 and 169) and then, in 1992, a further Comment that "replaces General Comment No. 7, reflecting and further developing it". In it, the Committee emphasizes: "The aim of the provisions of article 7 ... is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the

State Party to afford everyone protection through legislative and other measures as may be necessary, against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity... The text of article 7 allows of no limitation. The Committee also reaffirms that, even in situations of public emergency... no derogation from the provisions of article 7 is allowed and its provisions must remain in force. The Committee likewise observes that no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority." (The Geneva Conventions and Additional Protocols include provisions on restriction of liberty of persons affected by armed conflict, but do not of course undermine the fundamental principles of human rights, see article 38, page 575.)

The Human Rights Committee notes that the Covenant does not contain any definition of the concepts covered by article 7, "nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied..." The Committee has also noted that "it is not sufficient for the implementation of article 7 to prohibit such treatment or punishment or to make it a crime. States Parties should inform the Committee of the legislative, administrative, judicial and other measures they take to prevent and punish acts of torture and cruel, inhuman and degrading treatment in any territory under their jurisdiction." In addition, "In the view of the Committee, States Parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or *refoulement* [forced return of asylum seekers]. States Parties should indicate in their reports what measures they have adopted to that end." (Human Rights Committee, General Comment No. 20, 1992, HRI/GEN/1/Rev.8, pp. 190 and 191)

As quoted above, article 7 of the International Covenant on Civil and Political Rights has an additional provision, not repeated in article 37, which expressly prohibits medical or scientific experimentation without free consent, and the Human Rights Committee in its General Comment notes that reports of States Parties generally give little information on this point: "More attention should be given to the need and means to ensure observance of this provision. The Committee also observes that special protection in regard to such experiments is necessary in the case of persons not capable of giving valid consent, and in particular those under any form of detention or imprisonment. Such persons should not be subjected to any medical or scientific experimentation that may be detrimental to their health." (Human Rights Committee, General Comment No. 20, 1992, HRI/GEN/1/Rev.8, pp. 190 and 191) There is no equivalent provision relating to children in the Convention on the Rights of the Child, but article 36 protects the child from "all other forms of exploitation prejudicial to any aspects of the child's welfare" (page 543).

In its General Comment No. 3 on "HIV/AIDS and the rights of the child", the Committee on the Rights of the Child states:

"Children have been subjected to unnecessary or inappropriately designed research with little or no voice to either refuse or consent to participation. In line with the child's evolving capacities, consent of the child should be sought and consent may be sought from parents or guardians if necessary, but in all cases consent must be based on full disclosure of the risks and benefits of research to the child. States Parties must make every effort to ensure that children and, according to their evolving capacities, their parents and/or their guardians participate in decisions on research priorities and that a supportive environment is created for children who participate in such research." *(General Comment No. 3, 2003, CRC/GC/2003/3, para. 29)*

The Convention on the Rights of Persons with Disabilities, adopted in December 2006, repeats the Covenant's provision in article 15: "1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

"2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others**,** from being subjected to torture or cruel, inhuman or degrading treatment or punishment."

Enforced disappearance

In 1993, the General Assembly adopted a Declaration on the Protection of All Persons from Enforced Disappearance (A/RES/47/133), noting that any act of enforced disappearance is an offence against human dignity and constitutes a violation of the rules of international law, including "the right not to be subjected to torture and

other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life" (article 1). Article 20 of the Declaration covers the prevention of the abduction of children of parents subjected to enforced disappearance and of children born during their mother's enforced disappearance.

In December 2006, the United Nations General Assembly adopted the International Convention for the Protection of All Persons from Enforced Disappearance, which recognizes the right of persons not to be subjected to enforced disappearance, regardless of circumstances, and the right of victims to justice and reparation. Once in force, it will commit States Parties to it to criminalize enforced disappearance, to bring those responsible to justice and to take preventive measures. It affirms the right of any victim to know the truth about the circumstances of an enforced disappearance, and the fate of the disappeared person, and the right to freedom to seek, receive and impart information to this end. The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law. Article 25 of the Convention includes special provisions relating to children who are subject to enforced disappearance, or whose parents or legal guardians are:

"1. Each State Party shall take the necessary measures to prevent and punish under its criminal law:

(a) The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance;

(b) The falsification, concealment or destruction of documents attesting to the true identity of the children referred to in subparagraph (*a*) above.

2. Each State Party shall take the necessary measures to search for and identify the children referred to in paragraph 1(*a*) of this article and to return them to their families of origin, in accordance with legal procedures and applicable international agreements.

3. States Parties shall assist one another in searching for, identifying and locating the children referred to in paragraph 1(*a*) of this article.

4. Given the need to protect the best interests of the children referred to in paragraph 1(*a*) of this article and their right to preserve, or to have re-established, their identity, including their nationality, name and family relations as recognized by law, States Parties which recognize a system of adoption or other form of placement of children shall have legal procedures in place to review the adoption or placement procedure, and, where appropriate, to annul any adoption or placement of children that originated in an enforced disappearance.

5. In all cases, and in particular in all matters relating to this article, the best interests of the child shall be a primary consideration, and a child who is capable of forming his or her own views shall have the right to express those views freely, the views of the child being given due weight in accordance with the age and maturity of the child." (See also article 8, page 113, and article 9, page 121.)

Forms of inhuman or degrading punishment

The Committee on the Rights of the Child notes in its Concluding Observations on States Parties' reports and in other comments that any corporal punishment of children, however light, is incompatible with the Convention on the Rights of the Child, citing, in particular, article 19, which requires protection of children "from all forms of physical or mental violence", and in relation to school discipline, article 28(2), in addition to article 37.

In 2006, it adopted General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28.2 and 37, *inter alia*)". The Committee states it is issuing the General Comment

"… to highlight the obligation of all States Parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children and to outline the legislative and other awareness-raising and educational measures that States must take."

It notes that:

"Before the adoption of the Convention on the Rights of the Child, the International Bill of Human Rights – the Universal Declaration and the two International Covenants, on Civil and Political Rights and on Economic, Social and Cultural Rights – upheld 'everyone's' right to respect for his/her human dignity and physical integrity and to equal protection under the law. In asserting States' obligation to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment, the Committee notes that the Convention on the Rights of the Child builds on this foundation. The dignity of each and every individual is the fundamental guiding principle of international human rights law…

"Article 37 of the Convention requires States to ensure that 'no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment'. This is complemented and extended by article 19, which requires States to 'take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child'. There is no ambiguity: 'all forms of physical or mental violence' does not leave room for any level of legalized violence against children. Corporal 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." *(Committee on the Rights of the Child, General Comment No. 8, 2006, CRC/C/GC/8, paras. 2, 16 and 18. For summary and further discussion, see article 19, page 262. For full text of General Comment see: www.ohchr.org/english/bodies/crc/comments.htm.)*

The Committee has in particular criticized legal provisions in States Parties that attempt to draw a line between acceptable and unacceptable forms of corporal punishment. In many Concluding Observations on States Parties' reports, the Committee has called for a clear prohibition of all corporal punishment – in the family, in other forms of care, in schools and in the penal system (see article 19, page 264).

The Committee's examination of States Parties' reports has found that amputation and stoning as well as corporal punishment in the form of flogging and whipping persist for juveniles in some countries as a sentence of the courts. This raises an issue under article 37 as well as article 19, and conflicts with the United Nations rules and guidelines relating to juvenile justice, which the Committee has consistently promoted as providing relevant standards:

- the "Beijing Rules": rule 17.3 (Guiding Principles in Adjudication and Disposition) states that "Juveniles shall not be subject to corporal punishment".
- the United Nations Rules for the Protection of Juveniles Deprived of their Liberty: rule 67 states that "all disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment..."
- the Riyadh Guidelines: para. 21(h) states that education systems should devote particular attention to "avoidance of harsh disciplinary measures, particularly corporal punishment"; para. 54 says that "No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions".

In its General Comment No. 10 on "Children's rights in Juvenile Justice", the Committee reiterates the prohibition of corporal punishment and all other cruel or degrading forms of punishment, both as a sentence and as a punishment within institutions (CRC/C/GC/10).

Examples of the Committee's comments follow:

"In the light of article 37(a) of the Convention, the Committee is seriously concerned that persons who committed crimes while under 18 can be subjected to corporal punishment under Note 2 of article 49 of the Islamic Penal Law, or can be subjected to a variety of types of cruel, inhuman or degrading treatment and punishment such as amputation, flogging and stoning, which are systematically imposed by judicial authorities. Concurring with the Human Rights Committee (CCPR/C/79/Add.25), the Committee finds that application of such measures is incompatible with the Convention.
"The Committee recommends that the State Party take all necessary steps to end the imposition of corporal punishment under Note 2 of article 49 of the Islamic Penal Law and the imposition of amputation, flogging, stoning and other forms of cruel, inhuman or degrading treatment and punishment to persons who may have committed crimes while under 18." *(Islamic Republic of Iran CRC/C/15/Add.123, paras. 37 and 38)*

When it examined Iran's Second Report it re-emphasized its recommendation:

"The Committee deeply regrets that, under the existing laws, persons below the age of 18 who have committed a crime can be subjected to corporal punishment and can be sentenced to a variety of various types of torture, or other cruel, inhuman or degrading treatment and or punishment, such as amputation, flogging or stoning, which are systematically imposed by judicial authorities, and which the Committee considers to be totally incompatible with article 37(a) and other provisions of the Convention.
"In the light of the consideration of the Bill on the Establishment of Juvenile Courts, the Committee urges the State Party to take all the necessary measures to ensure that persons who committed crimes while under 18 are not subjected to any form of corporal punishment and to immediately suspend the imposition and the execution of sentences of amputation, flogging, stoning and other forms of cruel, inhuman or degrading treatment and or punishments." *(Islamic Republic of Iran CRC/C/15/Add.254, paras. 45 and 46)*

And it told Singapore to

"Prohibit the use of corporal punishment, including whipping and caning, and solitary confinement in all detention institutions for juvenile offenders, including police stations;..." *(Singapore CRC/C/15/Add.220, para. 45(d))*

In his 2005 report to the United Nations General Assembly, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment reviewed the relevant jurisprudence of international and regional human rights mechanisms on corporal punishment. He concluded: "On the basis of the review of jurisprudence of international and regional human rights mechanisms, the Special Rapporteur concludes that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Moreover, States cannot invoke provisions of domestic law to justify the violation of their human rights obligations under international law, including the prohibition of corporal punishment. He therefore calls upon States to abolish all forms of judicial and administrative corporal punishment without delay." (A/60/316, paras. 18 to 28)

The United Nations Secretary-General's Study on Violence Against Children, which reported to the General Assembly in October 2006, urges States to move quickly to prohibit all forms of violence against children, including all corporal punishment, harmful traditional practices, sexual violence, torture and other cruel, inhuman or degrading treatment or punishment, setting a target date of 2009. The Report notes: "Currently, at least 31 countries permit corporal punishment in sentencing children for crimes, which in some countries may include caning, flogging, stoning or amputation." (Report of the independent expert for the United Nations study on violence against children, United Nations, General Assembly, sixty-first session, August 2006, A/61/299, para. 60)

The complementary *World Report on Violence against Children* notes: "The first purpose of clear prohibition of violence is educational – to send a clear message across societies that all violence against children is unacceptable and unlawful, to reinforce positive, non-violent social norms. There should be no impunity for those who perpetrate violence against children, but care must be taken to ensure that child victims do not suffer further through insensitive enforcement of the law…" (Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006, pp. 18 and 19). For summary of recommendations and discussion, see article 19, page 251.

Solitary confinement or isolation of children

Placing a child in isolation or solitary confinement raises a further issue under article 37(a) of the Convention, in addition to the issues relating to the restriction of liberty. In its General Comment No. 10 on "Children's rights in Juvenile Justice", the Committee states that placement in a dark cell, closed or solitary confinement or any other punishment or treatment that may compromise the physical or mental health or well-being of the child concerned must be strictly prohibited (CRC/C/GC/10).

The Committee has expressed concern to a number of States about use of solitary confinement, telling Denmark, for example, to

"...(a) Review as a matter of priority the current practice of solitary confinement, limit the use of this measure to very exceptional cases, reduce the period for which it is allowed and seek its eventual abolition;
(b) Take measures to abolish the practice of imprisoning or confining in institutions persons under 18 who display difficult behaviour;..." *(Denmark CRC/C/DNK/CO/3, para. 59)*

"Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age"

Article 37(a) of the Convention on the Rights of the Child prohibits the death penalty for offences committed by persons below 18; article 6, providing all children with the right to life and maximum survival and development, has the same effect. The Committee reiterates this in its General Comment No. 10 on "Children's rights in Juvenile Justice" (CRC/C/GC/10).

As noted under article 6 (page 89) the International Covenant on Civil and Political Rights also states (in its article 6): "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women." (Para. 5) (A Second Optional Protocol to the Covenant, adopted by the General Assembly in 1989, aims at abolition of the death penalty: under its article 1, no one within the jurisdiction of a State Party to the Protocol may be executed.)

The Special Rapporteur on extrajudicial, summary or arbitrary executions focuses on restrictions on the use of the death penalty, including its prohibition for juvenile offenders. In her 2001 report, the Special Rapporteur reported that,

during the period under review, executions of children under the age of 18 at the time of the crime were reported to have occurred in Afghanistan, the Democratic Republic of the Congo, the Islamic Republic of Iran and the United States of America (E/CN.4/2001/9, paras. 79, 80 and 91).

The Committee has raised the issue with a number of States Parties. For example:

"In the light of articles 6 and 37(a) of the Convention, the Committee is seriously disturbed at the applicability of the death penalty for crimes committed by persons under 18 and emphasizes that such a penalty is incompatible with the Convention.
"The Committee strongly recommends that the State Party take immediate steps to halt and abolish by law the imposition of the death penalty for crimes committed by persons under 18." *(Islamic Republic of Iran CRC/C/15/Add.123, paras. 29 and 30)*

When it examined Iran's Second Report, it urged the State

"... to suspend immediately, for an unlimited period of time, the imposition and execution of the death penalty for crimes committed by persons under 18..." *(Islamic Republic of Iran CRC/C/15/Add.254, para. 73)*

It has emphasized that prohibition of the death penalty must be confirmed in legislation, with no exceptions, telling Burkina Faso that it was

"... deeply concerned at the possibility that children of 16 and 17 years of age are treated like adults and can be subjected to the death penalty or life imprisonment, which is a serious violation of article 37 of the Convention;..." *(Burkina Faso CRC/C/15/Add.193, para. 60)*

"The Committee takes note of the information that no child is sentenced to death and that capital punishment is not passed to persons who commit a crime before they reach the age of majority (in general 18 years). Nevertheless, it is deeply concerned that judges have the discretionary power which is often exercised when presiding over criminal cases involving children, to decide that a child has reached the age of majority at an earlier age, and that as a consequence capital punishment is imposed for offences committed by persons before they have reached the age of 18. The Committee is deeply alarmed that this is a serious violation of the fundamental rights under article 37 of the Convention.
"The Committee urges the State Party to take the necessary steps to immediately suspend the execution of all death penalties imposed on persons for having committed a crime before the age of 18, to take the appropriate legal measures to convert them into penalties in conformity with the provisions of the Convention and to abolish as a matter of the highest priority the death penalty as a sentence imposed on persons for having committed crimes before the age of 18, as required by article 37 of the Convention." *(Saudi Arabia CRC/C/SAU/CO/2, paras. 32 and 33)*

Paragraph (a) of article 37 also prohibits sentences of life imprisonment without possibility of release for offences committed before the age of 18, and it should be noted here that paragraph (b) requires that any detention or imprisonment must be used "only as a measure of last resort and for the shortest appropriate period". The Committee has expressed concern at "indeterminate sentences" as well as sentences of life imprisonment without the possibility of release, and in its General Comment No. 10 on "Children's rights in Juvenile Justice" it strongly recommends that States should prohibit "all forms of life imprisonment for offences committed by persons under the age of 18" (CRC/C/GC/10, para. 27).

The Committee has sometimes found both capital punishment and life imprisonment without possibility of release in a State's juvenile justice system. For example:

"The Committee remains concerned that national legislation appears to allow children between the ages of 16 and 18 to be sentenced to death with a two-year suspension of execution. It is the opinion of the Committee that the imposition of suspended death sentences on children constitutes cruel, inhuman or degrading treatment or punishment. It is the Committee's view that the aforementioned provisions of national law are incompatible with the principles and provisions of the Convention, notably those of its article 37(a)." *(China CRC/C/15/Add.56, para. 21)*

When it examined China's Second Report, the Committee welcomed the abolition of the death penalty in mainland China for persons who have committed an offence under the age of 18:

"However, it is concerned that life imprisonment continues to be possible for those under 18, even if that sentence is not often applied..."

The Committee went on to recommend that, within mainland China, the State should:

"... (a) Abolish life sentences for persons who have committed offences when under the age of 18;
(b) Amend legislation so as to ensure that all children deprived of their liberty, including in work study schools, have the right to prompt access to legal and other appropriate assistance and the right to challenge the legality of their deprivation of liberty before

a court or other competent, independent and impartial authority in a timely manner;..." *(China CRC/C/CHN/CO/2, paras. 89 and 93)*

Extrajudicial executions

The Committee has expressed concern at "extrajudicial executions":

"The Committee recommends that investigations be conducted into cases of extrajudicial executions, disappearance and torture which are carried out in the context of the internal violence prevailing in several parts of the country..." *(Peru CRC/C/15/Add.8, para. 16)*

A 1989 resolution of the United Nations Economic and Social Council proposes Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (resolution 1989/65, 24 May 1989).

The Special Rapporteur on extrajudicial, summary or arbitrary executions considers that honour crimes fall under the mandate. The Rapporteur's 2001 report to the Commission on Human Rights states that "the Special Rapporteur does not take up all cases of such killings, but has limited herself to act where the State either approves of or supports these acts, or extends impunity to the perpetrators by giving tacit support to the practice" (E/CN.4/2001/9, para. 41). The General Assembly at its fifty-fifth session adopted resolution 55/66 entitled "Working towards the elimination of crimes against women committed in the name of honour". For further discussion and Committee comments, see article 6, page 91.

"No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time"

Article 37(b) of the Convention requires that any restriction of liberty of children, whether part of the juvenile justice system or otherwise, must not be arbitrary and must be authorized in legislation. The wording of paragraph (b), strongly reflected in the relevant United Nations rules and guidelines, emphasizes that restriction of liberty for under-18-year-olds should be exceptional – a last resort and always "for the shortest appropriate time". The Committee reiterates this in its General Comment No. 10 on "Children's rights in Juvenile Justice".

In its General Comment and in recommendations to individual States, the Committee highlights the need for a range of alternatives – diversions – to avoid restriction of liberty. For example, it recommended Canada, Benin, Latvia and Oman:

"... To take the necessary measures (e.g. non-custodial alternatives and conditional release) to reduce considerably the number of children in detention and ensure that detention is only used as a measure of last resort and for the shortest possible period of time, and that children are always separated from adults in detention." *(Canada CRC/C/15/Add.215, para. 57(d))*

"... Implement alternative measures to deprivation of liberty, such as probation, community service or suspended sentences, in order to ensure that persons below 18 are deprived of liberty only as a last resort and for the shortest appropriate period of time;..." *(Benin CRC/C/BEN/CO/2, para. 76(d))*

"... Develop and implement alternatives to deprivation of liberty, including probation, mediation, community service or suspended sentences, and measures to effectively prevent and address drug- and/or alcohol-related delinquency." *(Latvia CRC/C/LVA/CO/2, para. 62(d))*

"... Continue to develop and implement a comprehensive system of alternative measures to deprivation of liberty, such as probation, community service orders and suspended sentences, in order to ensure that deprivation of liberty is used only as a measure of last resort; Take the necessary measures, for example suspended sentencing and early release, to ensure that deprivation of liberty is limited to the shortest time possible;..." *(Oman CRC/C/OMN/CO/2, para. 68(c) and (d))*

The Committee congratulated El Salvador on the establishment of a separate system of juvenile justice under the Juvenile Offenders Act of 1994, applicable to children below the age 18 and noted the positive provision

"... that juvenile courts are required to review the sentences imposed on minors every three months with a view to ensuring that the circumstances in which the sentence is being served are not affecting the process of reintegration of the child into society. The Committee is, however, concerned that the law is not adequately implemented in practice." *(El Salvador CRC/C/15/Add.232, para. 65)*

In addition, in relation to the juvenile justice system, article 40 emphasizes the overall aim of promoting the child's sense of dignity and worth and his or her reintegration, and the particular desirability of avoiding, when appropriate, resorting to judicial proceedings and of promoting alternatives to institutional care (see page 618).

The "Beijing Rules" in rule 17 sets detailed "Guiding principles in adjudication and disposition":

"(b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum.

(c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response.

(d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case..."

In relation to deprivation of liberty by official or public bodies, the Committee has adopted the definition of restriction of liberty in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty: "The deprivation of liberty means any form of detention or imprisonment or the placement of a person in another public or private custodial setting from which this person is not permitted to leave at will by order of any judicial, administrative or other public authority" (see original *Guidelines for Periodic Reports*, para. 137, note).

Paragraph (1) of article 9 of the International Covenant on Civil and Political Rights states: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law." In a General Comment, the Human Rights Committee points out "that paragraph 1 is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc." (Human Rights Committee, General Comment No. 8, 1982, HRI/GEN/1/Rev.8, para. 1, p. 169)

During its examination of States Parties' reports, the Committee on the Rights of the Child has found there are various routes, in various systems, to children's liberty being restricted, in welfare, health, and immigration as well as penal systems.

"Arrest", "detention" and "imprisonment" have been defined in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment: "arrest" is the act of "apprehending a person for the alleged commission of an offence"; "detention" is any deprivation of liberty, except as the result of a conviction for an offence; and "imprisonment" refers to deprivation of liberty arising from a conviction.

The United Nations General Assembly resolution adopting the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (resolution 45/113, 14 December 1990, and Annex) notes that "juveniles deprived of their liberty are highly vulnerable to abuse, victimization and the violation of their rights", and affirms that "the placement of a juvenile in an institution should always be a disposition of last resort and for the minimum necessary period". Rule 2 states that "Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release."

The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) were adopted in 1990 to provide a set of basic principles to promote the use of non-custodial measures generally, as well as minimum safeguards for persons subject to alternatives to imprisonment. The Rules notes that there should be no discrimination in their application on grounds of age (rule 2.2).

The Committee on the Rights of the Child has expressed concern at the use of the restriction of liberty for young children and has emphasized that a minimum age for any restriction of liberty should be defined in legislation. The Committee has expressed concern at the length of restriction of liberty of children on arrest and during investigation (pre-trial detention), as well as the length of sentences, both generally and in specific circumstances. It should be noted that article 37(d) provides the right to challenge the legality of any deprivation of liberty before a court or other appropriate body "and to a prompt decision on any such action". General Comment No. 10 on "Children's rights in Juvenile Justice" states that every child arrested and deprived of his/her liberty should be brought before a competent authority to examine the legality of the restriction of liberty within 24 hours, and that the legality should be reviewed regularly, preferably every two weeks (CRC/C/GC/10, para. 28b).

The Committee has noted the importance of registering all children deprived of their liberty, and the *Guidelines for Periodic Reports (Revised 2005)* asks for detailed disaggregated data in respect of the:

(a) Number of persons under 18 held in police stations or pre-trial detention after having

been accused of committing a crime reported to the police, and the average length of their detention;

(b) Number of institutions specifically for persons under 18 alleged as, accused of, or recognized as having infringed the penal law;

(c) Number of persons under 18 in these institutions and average length of stay;

(d) Number of persons under 18 detained in institutions that are not specifically for children;

(e) Number and percentage of persons under 18 who have been found guilty of an offence by a court and have been sentenced to detention and the average length of their detention;

(f) Number of reported cases of abuse and maltreatment of persons under 18 occurring during their arrest and detention/imprisonment." (CRC/C/58/Rev.1, Annex, para. 24)

The Report of the United Nations Secretary-General's Study on Violence Against Children notes that "In particular, little data are available about violence within care and detention institutions in most parts of the world because, although incidents may be documented, most institutions are not required to register and disclose this information – even to the parents of the children concerned." (Report of the independent expert for the United Nations study on violence against children, United Nations, General Assembly, sixty-first session, August 2006, A/61/299, para. 27)

Arrest, pre-trial detention

The Committee on the Rights of the Child has frequently expressed concern at the length of pre-trial detention permitted in States Parties. In its General Comment No. 10 on "Children's rights in Juvenile Justice", the Committee emphasizes that an effective package of alternatives to pre-trial detention must be available. Use of pre-trial detention as a form of punishment violates the presumption of innocence. The duration of pre-trial detention should be limited in law and subject to regular review. For example, the Committee recommended to Mongolia and Latvia:

"... the State Party should in particular:... Limit by law the length of pre-trial detention of persons below 18 so that it is truly a measure of last resort for the shortest period of time, and ensure that it is decided by a judge as soon as possible and consequently reviewed;..." (Mongolia CRC/C/15/Add.264, para. 68(b))

"... The Committee also recommends that the State Party undertake more specific measures in order to:

(a) Ensure that juveniles in detention and pre-trial detention have access to legal aid and independent and effective complaints mechanisms, and have the opportunity to remain in regular contact with their families;
(b) Provide educational instruction for juveniles in detention and pre-trial detention, and significantly improve the living conditions in these facilities;
(c) Ensure that deprivation of liberty, including pre-trial detention, is used as a measure of last resort, and for the shortest time possible, as authorized by the court through strengthening of procedures to facilitate expedited processing in accordance with internationally accepted guarantees for the right to a fair trial;..." (Latvia CRC/C/LVA/CO/2, para. 62)

Unreasonable bail demands were a concern in the Philippines:

"... the Committee is concerned about unreasonable amounts requested for bail, which cause insurmountable financial obstacles for children and their parents, limitations as regards the suspension of sentences and poor detention conditions, including so-called secret cells..." (Philippines CRC/C/15/Add.259, para. 90)

The Committee was concerned about detention of children under terrorism legislation in Nepal:

"The Committee is also concerned about the reports of persons under 18 held under the Terrorist and Disruptive Activities (Control and Punishment) Ordinance which has no set minimum age and grants security forces wide powers to arrest and detain any person suspected of being associated with the armed groups, including children."

It went on to recommend that the State should

"(a) Ensure that persons under 18 years are not held accountable, detained or prosecuted under anti-terrorism laws;...
"The Committee recommends the State Party to amend or repeal the Terrorist and Disruptive Activities (Control and Punishment) Ordinance in the light of international juvenile justice standards and norms." (Nepal CRC/C/15/Add.261, paras. 98 to 100)

In relation to the impact of emergency legislation in Northern Ireland, which is part of the United Kingdom, the Committee was concerned at the detention without charge of very young children for periods of up to seven days:

"... The Committee is concerned about the absence of effective safeguards to prevent the ill-treatment of children under the emergency legislation. In this connection, the Committee observes that under the same legislation it is possible to hold children as young as 10 for 7 days without charge. It is also noted that the emergency legislation which gives the police and army the power

to stop, question and search people on the street has led to complaints of children being badly treated. The Committee is concerned about this situation which may lead to a lack of confidence in the system of investigation and action on such complaints." (United Kingdom CRC/C/15/Add.34, para. 10)

It followed this up when it examined the United Kingdom's Second Report:

"... The Committee remains concerned at the negative impact of the conflict in Northern Ireland on children, including in the use of emergency and other legislation in force in Northern Ireland.
"The Committee recommends that the State Party:... In line with its previous recommendations ..., review the emergency and other legislation, including in relation to the system of administration of juvenile justice, at present in operation in Northern Ireland to ensure its consistency with the principles and provisions of the Convention." (United Kingdom CRC/C/15/Add.188, paras. 53 and 54(c))

In relation to arrest, the Human Rights Committee states in its General Comment on article 9 of the International Covenant on Civil and Political Rights that "in criminal cases any person arrested or detained has to be brought 'promptly' before a judge or other officer authorized by law to exercise judicial power. More precise time limits are fixed by law in most States Parties and, in the view of the Committee, delays must not exceed a few days..." The Human Rights Committee goes on to state that "pre-trial detention should be an exception and as short as possible". (Human Rights Committee, General Comment No. 8, 1982, HRI/GEN/1/Rev.8, paras. 2 and 3, p. 169)

The "Beijing Rules" requires (rule 10(2)) that following the apprehension of a juvenile, "A judge or other competent official or body shall, without delay, consider the issue of release". The Rules also states: "Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time. Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement within a family or in an educational setting or home." (Rule 13) The United Nations Rules for the Protection of Juveniles Deprived of their Liberty states that: "... Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention..." (Rule 17)

Imprisonment

In relation to sentences for criminal offences, the Committee has expressed concern at custodial sentences for young children and also at lengthy and indeterminate sentences:

"The Committee notes that the sanctions set forth in the legislation as regards juvenile offenders, especially in cases carrying the death penalty or life imprisonment, reduced respectively to life imprisonment or to 20 years imprisonment, are excessively high. Harsh sentences, as well as the occurrence of arbitrary detention of juveniles and the admittedly very difficult conditions of detention, are not in conformity with the provisions of articles 37 and 40 of the Convention." (Burkina Faso CRC/C/15/Add.19, para. 11)

Following examination of Burkina Faso's Second Report, the Committee expressed more detailed concern:

"... the Committee is deeply concerned at the possibility that children of 16 and 17 years of age are treated like adults and can be subjected to the death penalty or life imprisonment, which is a serious violation of article 37 of the Convention; the failure to separate children from adults in jails (with the exception of the jails in Ouagadougou and Bobo Dioulasso); the poor conditions of detention; the frequent recourse to and excessive length of pre-trial detention (often because of the long time needed for inquiries); the absence of a formal obligation to inform parents about the detention; the possibility for children to appeal only through their parents; the very limited possibilities for the rehabilitation and reintegration of juveniles following judicial proceedings; and the sporadic training of judges, prosecutors and prison staff."

Among its recommendations was that Burkina Faso should

"... Consider deprivation of liberty only as a measure of last resort and for the shortest possible period of time, limit by law the length of pre-trial detention, and ensure that the lawfulness of this detention is reviewed by a judge without delay and regularly thereafter;... Amend legislation to allow children to appeal a decision without their parents;..." (Burkina Faso CRC/C/15/Add.193, paras. 60 and 62(c) and (e))

In relation to the United Kingdom, the Committee expressed concern at the introduction of "secure training orders" authorizing custody for 12- to 14-year-olds and other increases in custodial sentences:

"... The Committee also recommends the introduction of careful monitoring of the

new Criminal Justice and Public Order Act 1994 with a view to ensuring full respect for the Convention on the Rights of the Child. In particular, the provisions of the Act which allow for, inter alia, *placement of secure training orders on children aged between 12 and 14, indeterminate detention, and the doubling of sentences which may be imposed on 15- to 17-year-old children should be reviewed with respect to their compatibility with the principles and provisions of the Convention."* *(United Kingdom CRC/C/15/Add.34, para. 36)*

When it examined the United Kingdom's Second Report, the Committee's concerns had multiplied:

"The Committee is particularly concerned that since the State Party's Initial Report, children between 12 and 14 years of age are now being deprived of their liberty. More generally, the Committee is deeply concerned at the increasing number of children who are being detained in custody at earlier ages for lesser offences and for longer sentences imposed as a result of the recently increased court powers to issue detention and restraining orders. The Committee is therefore concerned that deprivation of liberty is not being used only as a measure of last resort and for the shortest appropriate period of time, in violation of article 37(b) of the Convention..."

Among the Committee's recommendations was that the United Kingdom should:

"... Ensure that detention of children is used as a measure of last resort and for the shortest appropriate period of time and that children are separated from adults in detention, and encourage the use of alternative measures to the deprivation of liberty;..." *(United Kingdom CRC/C/15/Add.188, paras. 59 and 62(e))*

The Report of the United Nations Secretary-General's Study on Violence Against Children recommends: "Detention should be reserved for child offenders who are assessed as posing a real danger to others, and significant resources should be invested in alternative arrangements, as well as community-based rehabilitation and reintegration programmes;..." (A/61/299, para. 112 (b))

Detention outside the juvenile justice system

The Committee emphasizes in its General Comment No. 10 on "Children's rights in Juvenile Justice" that use of deprivation of liberty has very negative consequences for the child's harmonious development and seriously hampers his/her reintegration in society. As indicated already, the Committee has pointed out that the provisions limiting restriction of liberty under article 37 apply to all instances of restriction of liberty, including, for example, in health and welfare institutions and in relation to asylum-seeking and refugee children. The limitations on restriction of liberty in paragraph (b) and the safeguards in paragraphs (c) and (d) must be applied equally to non-penal forms of detention, as must the standards set out in the relevant United Nations rules and guidelines. The Convention on the Rights of Persons with Disabilities, adopted in December 2006, requires:

"1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

(a) Enjoy the right to liberty and security of person;

(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

"2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation." (Article 14)

In its General Comment No. 9 on "The rights of children with disabilities", the Committee on the Rights of the Child reiterates that States should take where necessary specific measures to ensure that children with disabilities are protected by and benefit from all the rights provided in the Convention on the Rights of the Child (CRC/C/GC/9, paras. 73 and 74).

Detention of children in relation to asylum seeking and immigration. The Committee's General Comment on "Treatment of unaccompanied and separated children outside their country of origin" states that their unaccompanied or migratory status cannot be a justification for detaining these children:

"In application of article 37 of the Convention and the principle of the best interests of the child, unaccompanied or separated children should not, as a general rule, be detained. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof. Where detention is exceptionally justified for other reasons, it shall be conducted in accordance with article 37(b) of the Convention that requires detention to

conform to the law of the relevant country and only to be used as a measure of last resort and for the shortest appropriate period of time. In consequence, all efforts, including acceleration of relevant processes, should be made to allow for the immediate release of unaccompanied or separated children from detention and their placement in other forms of appropriate accommodation.

"In addition to national requirements, international obligations constitute part of the law governing detention. With regard to asylum-seeking, unaccompanied and separated children, States must, in particular, respect their obligations deriving from article 31(1) of the 1951 Refugee Convention. States should further take into account that illegal entry into or stay in a country by an unaccompanied or separated child may also be justified according to general principles of law, where such entry or stay is the only way of preventing a violation of the fundamental human rights of the child. More generally, in developing policies on unaccompanied or separated children, including those who are victims of trafficking and exploitation, States should ensure that such children are not criminalized solely for reasons of illegal entry or presence in the country.

"In the exceptional case of detention, conditions of detention must be governed by the best interests of the child and pay full respect to article 37(a) and (c) of the Convention and other international obligations. Special arrangements must be made for living quarters that are suitable for children and that separate them from adults, unless it is considered in the child's best interests not to do so. Indeed, the underlying approach to such a programme should be 'care' and not 'detention'. Facilities should not be located in isolated areas where culturally appropriate community resources and access to legal aid are unavailable. Children should have the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel and their guardian. They should also be provided with the opportunity to receive all basic necessities as well as appropriate medical treatment and psychological counselling where necessary. During their period in detention, children have the right to education which ought, ideally, take place outside the detention premises in order to facilitate the continuance of their education upon release. They also have the right to recreation and play as provided for in article 31 of the Convention. In order to effectively secure the rights provided by article 37(d) of the Convention, unaccompanied or separated children deprived of their liberty shall be provided with prompt and free access to legal and other appropriate assistance, including the assignment of a legal representative." (Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, paras. 61 to 63)

The policy of the Office of the United Nations High Commissioner for Refugees is that refugee children should not be detained. The UNHCR *Refugee Children – Guidelines on Protection and Care* states: "Unfortunately, refugee children are sometimes detained or threatened with detention because of their own, or their parents', illegal entry into a country of asylum. Because detention can be very harmful to refugee children, it must be 'used only as a measure of last resort and for the shortest appropriate period of time'". The *Guidelines* emphasizes the need for special arrangements: "Strong efforts must be made to have them released from detention and placed in other accommodation. Families must be kept together at all times, which includes their stay in detention as well as being released together." Detention must be in conformity with the State's law, and "a distinction must be made between refugees/asylum seekers and other aliens". International standards including those of the Convention and the relevant United Nations rules must be complied with (*Refugee Children – Guidelines on Protection and Care,* UNHCR, Geneva, 1994, pp. 86 to 88). UNHCR Executive Conclusion No.44 (1986) discusses the limited circumstances in which asylum seekers can be detained and sets out basic standards for their treatment.

The UNHCR Policy on Refugee Children requires UNHCR staff to specifically pursue the protection of refugee children at risk of detention (UNHCR Policy on Refugee Children, UNHCR Executive Committee, 6 August 1993, EC/SCP/82, para. 27).

The Committee on the Rights of the Child has expressed concern at detention affecting refugee and asylum-seeking children and aliens. For example:

"Notwithstanding the 1997 Alien's Act requirement to use 'more lenient means when minors are involved', the Committee is seriously concerned about legislation which permits the detention of asylum-seeking children pending deportation. The Committee urges the State Party to reconsider the practice of detaining asylum-seeking children, and that such children be treated in accordance with the best interests of the child and in the light of the provisions of articles 20 and 22 of the Convention." (Austria CRC/C/15/Add.98, para. 27)

When it examined Austria's Second Report, the Committee recommended that the State should:

"... fully take into account the principle of the best interests of the child when deciding on the deportation of unaccompanied and separated asylum-seeking children and to avoid their placement in custody pending deportation." (Austria CRC/C/15/Add.251, para. 48)

"The Committee is deeply concerned at severe violations of the rights to freedom of movement and to choose one's residence in the context of the State Party's regroupment policy. The Committee is concerned further by the large number of children in regroupment camps and the extremely poor conditions in which they have to live, constituting, in many cases, cruel, inhuman and degrading treatment and violating numerous minimum standards with respect to children's rights.
"The Committee urges the State Party to complete, without further delay, the process of closing the regroupment camps and, pending closure, to guarantee respect of all the civil rights and freedoms of children and their families living in such camps." (Burundi CRC/C/15/Add.133, paras. 38 and 39)

Deprivation of liberty of children in need of protection. The Committee has noted that it does not accept that deprivation of liberty should be used for children in need of protection. Chile's Initial Report indicates that "children under the age of 18 who have been abandoned, ill-treated and/or present behavioural problems, may be deprived of their liberty or have their liberty restricted", initially in a centre for observation and diagnosis and subsequently, when a juvenile magistrate decides to apply a protective measure, which can include internment in specialized educational establishments The Initial Report notes that while the State has no right to impose penalties on children regarded as not responsible for criminal actions, "the correctional and rehabilitation measures which may be applied by the juvenile judge can extend to custodial measures which in fact are felt by the minor to be a penalty" (Chile CRC/C/3/Add.18, paras. 54 and 236). During discussion, a Committee member stated: "Deprivation of liberty was unacceptable in the case of children in need of protection because they had been abandoned or subjected to ill-treatment. Such children had committed no offence against the law... To deprive children of 16 or 17 years of age of their liberty for 15 days or more while awaiting a decision on their capacity for discernment, could affect them adversely and was contrary to the provisions of article 37 of the Convention, especially as it seemed that such detention could take place among convicted offenders." Another Committee member noted that "if children in need of protection were placed in a position where they were deprived of their liberty, they were in fact being deprived of the protection of the law." (Chile CRC/C/SR.148, paras. 34, 35 and 38). When the Committee examined Chile's Second Report, it reiterated its concern

"... that the Juvenile Act of 1967, based on the doctrine of 'irregular situation', which does not make a clear distinction, in terms of judicial procedures and treatment, between children in need of care and protection and those in conflict with the law, is still in force. It also notes with concern that detention is not used as a last resort, especially in the case of children who are poor and socially disadvantaged, and that often children are detained in detention centres for adults..."

The Committee recommended that Chile should:

"Continue reviewing laws and practices regarding the juvenile justice system in order to bring it as soon as possible into full compliance with the Convention, in particular articles 37, 40 and 39, as well as with other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)." (Chile CRC/C/15/Add.173, paras. 53 and 54)

The Committee insists that juvenile offenders should be separated from those detained for "behavioural problems":

"The Committee is concerned that:...
(c) Juvenile offenders, in the Netherlands, are sometimes detained with children institutionalized for behavioural problems;..."

The Committee went on to recommend:

"... Avoid detention of juvenile offenders with children institutionalized for behavioural problems;..." (Netherlands and Aruba CRC/C/15/Add.227, paras. 58 and 59(d))

The Committee has also noted that mentally ill children should never be detained in prison:

"The law permitting the placement of mentally disturbed children in jails should be reviewed as a matter of urgency." (Nepal CRC/C/15/Add.57, para. 38)

The Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, in his report to the General Assembly in 2000, notes that he had received information about children being subjected to cruel, inhuman or degrading treatment in non-penal institutions: "Unlike most adults, children can be deprived of their liberty in a variety of legal settings other than those related to the criminal justice system and are thus reported to be particularly vulnerable to some forms of torture

or ill-treatment in an institutional environment… Unlike detention within the justice system, which in most cases will take place for a predetermined period of time, children are sometimes held in such institutions and subjected to cruel and inhuman or degrading treatment without time limits or periodic review or judicial oversight of the placement decision. Such indeterminate confinement, particularly in institutions that severely restrict their freedom of movement, can in itself constitute cruel or inhuman treatment." (A/55/290, paras. 11 and 12)

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age"

This provision of article 37 stresses that children deprived of their liberty should not lose their fundamental rights, and that their treatment must take account of their age and child development. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty states in rule 13: "Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty, such as social security rights and benefits, freedom of association and, upon reaching the minimum age established by law, the right to marry."

The Committee has often expressed concern at the conditions in detention institutions and places where children's liberty is restricted. It has proposed that the detailed standards in the "Beijing Rules" and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty should be applied to all situations, and indicated that the Convention requires effective monitoring, inspection and complaints procedures, as well as appropriate training of all personnel. For example, it recommended to Nicaragua and Peru:

"… Ensure that deprivation of liberty is used only as a measure of last resort and improve the conditions of detention of persons below 18 – especially in police detention centres – notably by complying with the international standards as to surface area, ventilation, fresh air, natural and artificial light, proper food, drinking water and hygienic conditions;…" *(Nicaragua CRC/C/15/Add.265, para. 74(c))*

"… Improve the conditions of detention of persons below 18, notably by complying with the international standards as to surface area, ventilation, fresh air, natural and artificial light, proper food, drinking water and hygienic conditions;…" *(Peru CRC/C/PER/CO/3, para. 72(c))*

It told the United Kingdom:

"The Committee is also extremely concerned at the conditions that children experience in detention and that children do not receive adequate protection or help in young offenders' institutions (for 15- to 17-year-olds), noting the very poor staff-child ratio, high levels of violence, bullying, self-harm and suicide, the inadequate rehabilitation opportunities, the solitary confinement in inappropriate conditions for a long time as a disciplinary measure or for protection, and the fact that girls and some boys in prisons are still not separated from adults.
"In addition, the Committee notes with concern that:… Children in custody do not always have access to independent advocacy services and to basic services such as education, adequate health care, etc.;…"

The Committee recommended that the United Kingdom should:

"… Ensure that every child deprived of his or her liberty has access to independent advocacy services and to an independent, child-sensitive and accessible complaint procedure; Take all necessary measures, as a matter of urgency, to review the conditions of detention and ensure that all children deprived of their liberty have statutory rights to education, health and child protection equal to those of other children;…" *(United Kingdom CRC/C/15/Add.188, paras. 59 and 62(f) and (g))*

The fact that deprivation of liberty occurs in "institutions" rather than prisons does not lessen the need for strict conditions, monitoring, etc. Article 3(3) of the Convention requires States to ensure that all institutions conform to standards established by competent authorities (see page 41).

The Report of the United Nations Secretary-General's Study on Violence Against Children recommends that States:

"Regularly reassess placements by reviewing the reasons for a child's placement in care or detention facilities, with a view to transferring the child to family or community-based care;

"Establish effective and independent complaints, investigation and enforcement mechanisms to deal with cases of violence in care and justice system;

"Ensure that children in institutions are aware of their rights and can access the mechanisms in place to protect those rights;

"Ensure effective monitoring and regular access to care and justice institutions by independent bodies empowered to conduct unannounced visits, conduct interviews with children and staff in private, and investigate allegations of violence;

"Ratify the Optional Protocol to the Convention against Torture, which provides for a system of independent preventive visits to places of detention." (Report of the independent expert for the United Nations study on violence against children, United Nations, General Assembly, sixty-first session, August 2006, A/61/299, para. 112 (c) to (g))

"In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so"

The principle in article 37(c) that every child deprived of liberty shall be separated from adults is qualified – "unless it is considered in the child's best interest not to do so". In the International Covenant on Civil and Political Rights, article 10(2)(b) requires: "Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication." Similarly, in the Standard Minimum Rules for the Treatment of Prisoners, rule 8(d) requires: "Young prisoners shall be kept separate from adults." In a General Comment on article 10 of the Covenant on Civil and Political Rights, the Human Rights Committee states: "Subparagraph 2(b) calls, *inter alia*, for accused juvenile persons to be separated from adults. The information in reports shows that a number of States are not taking sufficient account of the fact that this is an unconditional requirement of the Covenant. It is the Committee's opinion that, as is clear from the text of the Covenant, deviation from States Parties' obligations under subparagraph 2(b) cannot be justified by any consideration whatsoever." (Human Rights Committee, General Comment No. 9, 1982, HRI/GEN/1/Rev.8, para. 2, pp. 170 and 171)

Several States Parties made reservations or declarations concerning this provision of article 37. For example, Australia notes: "... In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is unable to comply with the obligations imposed by article 37(c)". Canada "accepts the general principle of article 37(c) of the Convention, but reserves the right not to detain children separately from adults where this is not appropriate or feasible". Iceland notes that separation is not obligatory under Icelandic law, but that the law provided for age to be taken into account when deciding placement: "... it is expected that decisions on the imprisonment of juveniles will always take account of the juvenile's best interest".

New Zealand reserved the right not to apply article 37(c) "where the shortage of suitable facilities makes the mixing of juveniles and adults unavoidable; and further reserves the right not to apply article 37(c) where the interests of other juveniles in an establishment require the removal of a particular juvenile offender or where mixing is considered to be of benefit to the persons concerned." And the United Kingdom states: "Where at any time there is a lack of suitable accommodation or adequate facilities for a particular individual in any institution in which young offenders are detained, or where the mixing of adults and children is deemed to be mutually beneficial, the United Kingdom reserves the right not to apply article 37(c) in so far as those provisions require children who are detained to be accommodated separately from adults." (CRC/C/2/Rev.8, pp. 16, 24, 34 and 42)

The Committee on the Rights of the Child has expressed concern at these reservations and welcomed commitments from States Parties to review them with a view to withdrawal. The Committee has commented on instances of non-separation and has also noted that separation from adults applies to all situations of restriction of liberty.

The United Nations Secretary-General's Study on Violence Against Children reports: "In keeping with the provisions of the Convention on the Rights of the Child, national legislation in most countries requires separate facilities for children in conflict with the law in order to prevent abuse and exploitation by adults. Yet detention with adults is routine in many countries. Children in detention are also at heightened risk of self-harm or suicidal behaviour, particularly in cases of prolonged or indefinite detention, isolation, or when detained in adult facilities." (A/61/299, para. 63)

Separation of pre-trial detainees from other children deprived of liberty

The International Covenant on Civil and Political Rights requires that "Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons" (article 10(2)(a)). Also the Standard Minimum Rules for Prisoners states that: "Untried prisoners shall be kept separate from convicted prisoners" (rule 8(b)). And the United Nations Rules for the Protection of Juveniles Deprived of their Liberty says: "... Untried detainees should be separated from convicted juveniles" (rule 17). The Committee on the Rights of the Child has confirmed that pre-trial detainees should be separated from convicted detainees. For example, the Committee told Jordan

"... [it] also deplores the fact that children taken into custody though not convicted of any criminal offence, may nevertheless be kept in detention in the same premises as convicted persons." *(Jordan CRC/C/15/Add.21, para. 16)*

And to Paraguay it noted its concern

"... that in at least one major detention centre, persons who have been convicted and those awaiting trial are not housed separately." *(Paraguay CRC/C/15/Add.75, para. 28)*

The Committee told Costa Rica to

"... ensure that persons below 18 when in custody are in any case separated from adults and those waiting for sentences are separated from those sentenced to deprivation of liberty..." *(Costa Rica CRC/C/15/Add.266, para. 56)*

"... and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances"

Paragraph (c) of article 37 requires that every child deprived of liberty shall "have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances". Such circumstances would have to be justified in the context of the Convention's principles, including in particular the child's best interests. The Committee's General Comment No. 10 on "Children's rights in Juvenile Justice" states that "exceptional circumstances" which may limit contact should be clearly described in the law and not left to the discretion of the relevant authorities. In order to facilitate visits, the child should be placed in a facility that is as close as possible to the place of residence of his/her family (CRC/C/GC/10, para. 28c).

"Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action"

Article 40 provides further detail of the safeguards that must be provided in relation to the administration of juvenile justice, as does the "Beijing Rules" (the United Nations Standard Minimum Rules for the Administration of Juvenile Justice) and other instruments (for full discussion, see article 40, page 618). In its General Comment No. 10 on "Children's rights in Juvenile Justice", the Committee proposes that every child arrested and deprived of liberty should be brought before a competent authority to examine the legality of any continuation of the deprivation of liberty within 24 hours. The legality of any pre-trial detention should be reviewed regularly, preferably every two weeks. Any child in pre-trial detention should be formally charged and brought before a court not more than 30 days after the detention began. Conscious of the practice of adjourning court hearings, often more than once, the Committee urges States Parties to introduce the necessary legal provisions to ensure that a final decision is made not later than six months after charging (CRC/C/GC/10, para. 28a).

The right to challenge the legality of any deprivation of liberty and to a prompt decision is guaranteed by article 8 of the Universal Declaration on Human Rights: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law"; and article 9(4) of the International Covenant on Civil and Political Rights says: "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." The Human Rights Committee has provided comments on what constitutes a "court" for this purpose and also notes that article 9(4) of the Covenant applies to all cases of detention, including those ordered by an administrative body or authority. (See Antti Vuolanne

v Finland (265/1987) (7 April 1989), Official Records of the General Assembly, forty-fourth session, Supplement No. 40 A/44/40, annex X, sect. J, etc., quoted in Human Rights and Pre-trial Detention, p. 40.)

The Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment (General Assembly resolution 43/173, 9 December 1988, annex) provides in principle 32: "1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful. 2. The proceedings ... shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority." The Committee has emphasized that the safeguards apply to all forms of deprivation of liberty, not only those in the system of juvenile justice (and it should be noted that rule 3 of the "Beijing Rules" encourages the extension of the principles of the Rules to cover all juveniles dealt with in care and welfare proceedings). In the report following its Day of General Discussion on the "Administration of juvenile justice" the Committee noted:

"Concern was expressed at the placement of children in institutions, under a welfare pretext, without taking into due consideration the best interests of the child nor ensuring the fundamental safeguards recognized by the Convention, including the right to challenge the decision of placement before a judicial authority, to a periodic review of the treatment provided to the child and all other circumstances relevant to the child's placement and the right to lodge complaints." (Committee on the Rights of the Child, Report on the tenth session, October/November 1995, CRC/C/46, para. 228)

Complaints procedures

The Committee has interpreted article 12 of the Convention as requiring the provision of complaints procedures for children (see page 158) and has highlighted the particular need for complaints procedures for children whose liberty is restricted. In its General Comment No. 10 on "Children's rights in Juvenile Justice", the Committee states:

"Every child should have the right to make requests or complaints, without censorship as to the substance, to the central administration, the judicial authority or other proper independent authority and to be informed of the response without delay; children need to know about and have easy access to these mechanisms." (Committee on the Rights of the Child, General Comment No. 10, 2007, CRC/C/GC/10, para. 28c)

Rule 24 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty requires that "On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension."

Rule 25 says: "All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints, and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention."

In addition, rules 75 to 78 require that juveniles have the opportunity to make requests or complaints to the direction of the detention facility and his or her authorized representative, to the central administration, the judicial authority or other proper authorities through approved channels. "Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements." (Rule 77) "Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints." (Rule 78)

Training

The Committee has consistently recommended that all those involved in any form of restriction of liberty of children, and in the administration of

juvenile justice systems, should receive training in the principles and provisions of the Convention and of the relevant United Nations rules and guidelines and this is reiterated in detail in its General Comment No. 10 on "Children's rights in Juvenile Justice" (CRC/C/GC/10).

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 37, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 37 is relevant to **departments of justice, home affairs, social welfare, immigration**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 37 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 37 likely to include training for **the judiciary, lawyers, police, all those working in the juvenile justice system and institutional care including detention, and any other forms of restriction of liberty**)?

• Specific issues in implementing article 37

- ☐ Is the prohibition of torture and all other cruel, inhuman or degrading treatment or punishment included in legislation specifically applying to all children in the jurisdiction?
- ☐ Is torture defined in this legislation?
- ☐ Are there no exceptions allowed to this legislation under any circumstances?
- ☐ Is capital punishment prohibited in legislation for offences committed by children below the age of 18?
- ☐ Is life imprisonment without the possibility of release not available in any circumstances for under-18-year-olds?
- ☐ Are indefinite or indeterminate sentences not available in any circumstances for under-18-year-olds?

How to use the checklist, *see page XIX*

Is any form of corporal punishment prohibited in legislation and not used for under-18-year-olds

- ☐ as a sentence of the courts or a punishment in penal institutions?
- ☐ as a punishment in schools?
- ☐ as a punishment in any other institutions which include children?
- ☐ as a punishment in any forms of alternative care?
- ☐ as a punishment within the family?

☐ Is solitary confinement of children prohibited under all circumstances?

☐ Has the State initiated or promoted awareness-raising and information campaigns to protect children from torture and other cruel, inhuman or degrading treatment?

☐ Has the State ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment?

☐ Has the State ratified the Optional Protocol to the Convention against Torture?

Arrest

☐ Are all under-18-year-olds treated as children within the justice system?

Does legislation, policy and practice ensure that arrest of children is used

- ☐ only as a measure of last resort?
- ☐ for the shortest appropriate period of time?

Is there a minimum age below which a child

- ☐ cannot be arrested?
- ☐ cannot be detained prior to arrest by police or other authorities?

Do legislation and other measures in the State ensure that any detention of a juvenile prior to arrest is

- ☐ only used as a measure of last resort?
- ☐ for the shortest appropriate period of time?

Deprivation of liberty following arrest

☐ Is there a defined maximum period for detention of a child following arrest without a court hearing at which the detention can be challenged?

☐ Is there a minimum age below which a child cannot be detained following arrest and prior to a court hearing?

Does legislation ensure that any detention of a juvenile following arrest is

- ☐ a measure of last resort?
- ☐ for the shortest appropriate time?

Pre-trial deprivation of liberty

Does legislation ensure that any pre-trial detention of a child is

- ☐ a measure of last resort?
- ☐ for the shortest appropriate time?

☐ Is there a minimum age below which a child cannot be detained prior to a trial?

☐ Does legislation ensure that children detained pre-trial are separated from convicted children?

How to use the checklist, see page XIX

- ☐ Are alternative measures available to prevent pre-trial detention of children whenever possible?

Deprivation of liberty as a sentence of the courts

- ☐ Is there a minimum age at which a sentence of imprisonment may be imposed on a child?
- ☐ Are there no other arrangements that allow for the restriction of liberty of children who are alleged as, accused of or recognized as having committed certain crimes below this minimum age?

Do safeguards exist to ensure that sentences of imprisonment, or sentences that involve the restriction of liberty of a child, are used only

- ☐ as a measure of last resort?
- ☐ for the shortest appropriate time?

Restriction of liberty other than as a sentence of the courts

Is all other legislation permitting the restriction of liberty of under-18-year-olds consistent with article 37 and other articles, wherever such restriction occurs, including

- ☐ in the criminal/juvenile justice system?
- ☐ in the welfare system?
- ☐ in the education system?
- ☐ in the health system including mental health?
- ☐ in relation to asylum seeking and immigration?
- ☐ in any other circumstances whatsoever, including, for example, for "status" offences?

- ☐ In each case, does the legislation define a minimum age below which no child (boy/girl) may have his or her liberty restricted?

In each case, does the legislation ensure that any detention outside the penal system is

- ☐ a measure of last resort?
- ☐ for the shortest appropriate period of time?
- ☐ not for an indeterminate period?

- ☐ Is there restriction of liberty of children in circumstances not set out in legislation?

Does legislation exist to prevent arbitrary restriction of liberty of children in

- ☐ State-provided institutions and services?
- ☐ other institutions and services?

- ☐ Does legislation exist to limit deprivation of liberty of children by parents/guardians/foster parents, and so forth?

Conditions in detention

(See also the detailed standards in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty)

- ☐ Have the United Nations Rules for the Protection of Juveniles Deprived of their Liberty been incorporated into legislation applying to all situations of deprivation of liberty?
- ☐ Is there effective inspection and monitoring of all institutions in which children may be deprived of their liberty?

How to use the checklist, see page XIX

- ☐ Is the right of the child deprived of liberty to a periodic review of his or her situation and treatment set out in legislation?
- ☐ Are the details of any restriction of liberty of any child appropriately registered, reported and recorded?
- ☐ Is disaggregated data available on all children deprived of liberty?
- ☐ Do all children deprived of liberty have access to effective complaints procedures concerning all aspects of their treatment?

Separation from adults

Are children always separated from adults in detention unless it is considered not to be in the child's best interest

- ☐ prior to arrest?
- ☐ following arrest?
- ☐ prior to trial?
- ☐ following sentence by a court?
- ☐ in the health, including mental health, system?
- ☐ in the welfare system?
- ☐ in relation to asylum seeking and immigration?
- ☐ in any other situation?

Contacts with family while detained

- ☐ Is the right of the child deprived of liberty to maintain contact with his or her family through correspondence and visits set out in legislation?
- ☐ Are any restrictions on this right limited to exceptional circumstances?
- ☐ In case of any restrictions, does the child concerned have a right of appeal to an independent body?

Access to legal and other assistance

Does the child deprived of liberty have the right to prompt legal and other appropriate assistance

- ☐ when detained prior to arrest?
- ☐ on arrest?
- ☐ when detained pre-trial?
- ☐ when detained following a sentence of the courts?
- ☐ when deprived of liberty in any other circumstances?

Arrangements to challenge restriction of liberty

Does every child deprived of liberty have the right to challenge the deprivation of liberty before a court or some other competent authority

- ☐ when detained before arrest?
- ☐ when detained following arrest?
- ☐ when sentenced to be detained?
- ☐ when their liberty is restricted in other circumstances?

- ☐ In the case of such challenges of restriction of liberty, does legislation guarantee the child a prompt decision, within a defined period of time?

How to use the checklist, *see page XIX*

Reminder: **The Convention is indivisible and its articles interdependent. Article 37 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 37 include:

Article 19: protection from all forms of violence
Article 20: alternative care
Article 22: refugee children
Article 24: restriction of liberty in health service
Article 25: periodic review of placement/treatment
Article 34: protection from sexual exploitation
Article 38: armed conflict
Article 39: rehabilitative care for victims of torture, etc.
Article 40: juvenile justice

Protection of children affected by armed conflict

Text of Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Under article 38 of the Convention on the Rights of the Child, States Parties are required to:

- respect and ensure respect for rules of international humanitarian law applicable to them in armed conflicts (principally, the four Geneva Conventions and two additional Protocols);
- take all feasible measures to ensure that under-15-year-olds do not take a direct part in hostilities;
- refrain from recruiting under-15-year-olds into armed forces;
- give priority to the oldest when recruiting 15- to 18-year-olds;
- take all feasible measures to ensure protection and care of children affected by an armed conflict.

The Committee on the Rights of the Child has emphasized that States should take measures to secure the rights of all children within their jurisdiction in times of armed conflict and that the principles of the Convention are not subject to derogation in times of armed conflict. In particular, it has stressed its belief that, in the light of the definition of the child and the principle of the best interests of the child, no child under the age of 18 should be allowed to be involved in hostilities, either directly or indirectly, and that no child under 18 should be recruited into armed forces, either through conscription or voluntary enlistment.

Summary

In May 2002, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict entered into force. This requires States to "take all feasible measures" to ensure that under-18-year-olds do not take a direct part in hostilities and to ensure that they are not compulsorily recruited, and it replaces 15 with 16 years as the minimum age for recruitment. This is because it states that States Parties should raise "in years" the minimum age for voluntary recruitment set by article 38 – in other words 16 becomes the minimum age for recruitment under the Protocol. By June 2007 the Protocol had been ratified or acceded to by over one hundred States.

The Rome Statute of the International Criminal Court, adopted in 1998, characterizes as a war crime conscripting or enlisting children under the age of 15 into national armed forces at a time of armed conflict or using them to participate actively in hostilities (article 8).

In 1999, the General Conference of the International Labour Organization adopted the Worst Forms of Child Labour Convention (No.182), including in its definition of the worst forms of child labour "forced or compulsory recruitment of children for use in armed conflict" (article 3).

In 1996, a major study, proposed by the Committee, *Impact of Armed Conflict on Children*, by Ms Graça Machel, was presented to the United Nations General Assembly. Subsequently, a Special Representative of the Secretary-General for children and armed conflict was appointed and the Security Council has adopted resolutions condemning in strong terms the involvement of children in armed conflict. ■

International humanitarian law

The Committee has indicated that the relevant international humanitarian law, referred to in paragraphs 1 and 4 of article 38, includes the four Geneva Conventions, the three Additional Protocols, the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, the Declaration of the Rights of the Child (in which principle 8 states: "The child shall in all circumstances be among the first to receive protection and relief"), and the Convention on the Rights of the Child (Committee on the Rights of the Child, Report on the second session, September/October 1992, CRC/C/10, para. 65). Mention was also made of other United Nations standards, such as the International Covenant on Civil and Political Rights, and General Comment No. 17, adopted by the Human Rights Committee on article 24 of that Covenant, which recognizes the right of children to necessary protection. In its General Comment, the Human Rights Committee emphasizes that "as individuals, children benefit from all of the civil rights enunciated in the Covenant". It also "wishes to draw the attention of States Parties to the need to include in their reports information on measures adopted to ensure that children do not take a direct part in armed conflicts". It goes on to note that while the Covenant does not set an age at which a child attains majority, "... a State Party cannot absolve itself from its obligations under the Covenant regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law." (Human Rights Committee, General Comment No. 17, 1989, HRI/GEN/1/Rev.8, pp. 183 *et seq.*)

During the drafting of article 38, there was a strong move not only to ensure that its provisions did not in any way undermine existing standards in international humanitarian law but also to go beyond existing international standards so that children were protected up to the age of 18, in order to secure consistency with the rest of the Convention The final version of article 38 was a compromise. One representative of the Working Group expressed dissatisfaction with the "speed and confusion" of this discussion and several representatives indicated that they could not join the consensus in adopting the text, although the chairman ruled that it had been adopted by consensus (E/CN.4/1989/48, pp. 110 to 116; Detrick, pp. 512 to 515; also E/CN.4/1989/48, pp. 5 to 8; Detrick, p. 630).

The study on the *Impact of Armed Conflict on Children* (see below, page 577) notes that the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and the National Red Cross and Red Crescent Societies have adopted the following as a full definition of international humanitarian law: "international rules, established by treaties or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts and which, for humanitarian reasons, limit the right of parties to a conflict to use the methods and means of warfare of their choice or protect persons and property that are, or may be, affected by conflict". The study notes that the Convention on the Rights of the Child provides "the most comprehensive and specific protection for children". It also mentions the relevance of the two International Covenants, and the Convention on the Elimination of All Forms of Discrimination against Women, and other specialist treaties covering such issues as torture,

genocide and racial discrimination. The 1951 Convention relating to the Status of Refugees and its 1967 Protocol (see article 22, page 307) provide basic standards for the protection of refugees in countries of asylum. Beyond this, there are various regional instruments (A/51/306, paras. 211 (note 40), 226 *et seq.*, and 222 to 225).

The Special Representative on children and armed conflict has also compiled a list of the relevant human rights standards. As well as the above-mentioned treaties, the following provisions are listed:

"… The Rome Statute of the International Criminal Court (1998) classifies as war crimes the enlistment and use of children under age 15 in hostilities, intentional attacks on hospitals and schools, rape and other grave acts of sexual violence against children. In addition, the forcible transfer of children from a group targeted for destruction constitutes genocide under the Statute;

"International Labour Organization Convention No.182 (1999) declares child soldiering to be among the worst forms of child labour and prohibits forced or compulsory recruitment of children under the age of 18 in armed conflict;

"The African Charter on the Rights and Welfare of the Child (1999) establishes 18 as the minimum age for all compulsory military recruitment and participation in hostilities;

"Security Council resolutions 1261 (1999), 1314 (2001), 1379 (2001), 1460 (2003) and 1539 (2004) [resolution 1612 (2005) can now be added to these resolutions];..."

The Special Representative points out that additionally, "… concrete commitments… have been entered into by parties to conflict; these commitments typically concern recruitment and use of children, attacks on schools and hospitals, assurance of humanitarian access, observance of humanitarian ceasefires, release of abducted children, use of landmines, etc. … In addition to international instruments and standards, various societies can draw on their own traditional norms governing the conduct of warfare. Societies throughout history have recognized the obligation to provide children with special protection from harm, even in times of war. Distinctions between acceptable and unacceptable practices have been maintained, as have time-honoured taboos and injunctions prohibiting indiscriminate targeting of civilian populations, especially children and women. These traditional norms provide a "second pillar of protection", reinforcing and complementing the "first pillar of protection" provided by international instruments." (Report of the Special Representative to the Secretary-General on children and armed conflict to the Commission on Human Rights, 2005, E/CN.4/2005.77, para. 18)

The Geneva Conventions and Additional Protocols

The four Geneva Conventions were adopted in 1949 at the Diplomatic Conference of Geneva, sponsored by the International Committee of the Red Cross: Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949; Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949; Convention III relative to the Treatment of Prisoners of War, 1949; and Convention IV relative to the Protection of Civilian Persons in Time of War, 1949. In 2006 the Geneva Conventions achieved universal ratification, as all Member States of the United Nations had ratified or acceded to them.

Convention IV offers general protection to children as civilians. Article 3, common to all four Conventions, covers "armed conflict not of an international character occurring in the territory of one of the High Contracting Parties". Persons "taking no active part in the hostilities" must in all circumstances be treated humanely, and be protected from "violence to life and person", in particular from murder of all kinds, mutilation, cruel treatment and torture, hostage-taking, humiliating and degrading treatment, and so forth. The Conventions do not contain any minimum age for child participation in hostilities. Also under the Convention IV, children and pregnant women are among those for whom the parties should endeavour to conclude local agreements to remove them from "besieged or encircled areas" (article 17); each State must allow the free passage of relief intended for children under the age of 15 and maternity cases (article 23); children under the age of 15 and mothers of children under 7 are among those who can be received into the hospital or safety zones established by the parties in an international armed conflict (article 38(5)); an occupying power must facilitate the proper working of institutions devoted to the care of children in occupied territories (article 50). (Other provisions relating to children are in articles 81 and 89.)

In 1977, two Protocols Additional to the Conventions were adopted. Protocol I, covering international armed conflicts, requires that the fighting parties distinguish at all times between combatants and civilians and that the only legal

targets of attack should be military in nature. It covers all civilians, with two articles offering specific protection to children. Article 77 – Protection of children – states:

"1. Children shall be the object of special respect and shall be protected from any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.

2. The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest.

3. If, in exceptional cases, despite the provisions of paragraph 2, children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse party, they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war.

4. If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units as provided in Article 75, paragraph 5.

5. The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed."

Article 78 of Protocol I deals with the evacuation of children to another country; this should not take place except for compelling reasons, and the article establishes some of the terms under which any evacuation should take place (in relation to internal conflicts, evacuation of children is covered in Protocol II, article 4(3)(e) – see below).

Also in Protocol I, newborn babies and maternity cases are categorized with "wounded" and "sick", in need of respect and protection (article 8(a)).

Article 4 of Protocol II, which applies to non-international – that is internal – armed conflicts, includes a paragraph on protection of children, requiring that:

"3. Children shall be provided with the care and aid they require, and in particular:

(a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;

(b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;

(c) children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;

(d) the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of subparagraph (c) and are captured;

(e) measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being."

A third Protocol was adopted in 2005, which adds the non-religious and politically neutral emblem of the 'red crystal' to the Red Cross and Red Crescent emblems for assistance to victims of armed conflict, but which does not directly affect children.

Declaration on the Protection of Women and Children in Emergency and Armed Conflict

In 1974, the United Nations General Assembly adopted the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (resolution 3318 (XXIX)). In its Preamble the General Assembly expresses its "deep concern over the sufferings of women and children belonging to the civilian population who in periods of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence are too often the victims of inhuman acts and consequently suffer serious harm..." The General Assembly is "conscious of its responsibility for the destiny of the rising generation and for the destiny of mothers, who play an important role in society, in the family and particularly in the upbringing of children. Bearing in mind the need to provide special protection of women and children belonging to the civilian population..." This calls for strict observance of principles covering:

protection from attacks and bombing and the use of chemical and bacteriological weapons; fulfilment of the Geneva Conventions and other international instruments; all efforts to spare women and children from the ravages of war; considering criminal all forms of repression and cruel and inhuman treatment of women and children; and that women and children finding themselves in circumstances of emergency or armed conflict must not be deprived of shelter, food, medical aid or other inalienable rights.

Study on *Impact of Armed Conflict on Children*

In its third session, the Committee on the Rights of the Child recommended to the General Assembly that it should request the United Nations Secretary-General to undertake a study "on ways and means of improving the protection of children from the adverse affect of armed conflicts" (Report on the third session, January 1993, CRC/C/16, p. 4, and Annex VI, p. 58). It was this proposal that led to the appointment by the Secretary-General of Ms. Graça Machel to carry out the study (pursuant to General Assembly resolution 48/157). The study was published in August 1996 and presented to the fifty-first session of the General Assembly. A review of progress was published in 2000 (see box, page 578).

The study and its annexes provide detailed discussion and recommendations on "Mitigating the impact of armed conflict on children"; "Relevance and adequacy of existing standards for the protection of children"; "Reconstruction and reconciliation"; "Conflict prevention" and "Implementation mechanisms".

In relation to implementation of international standards, the study proposes:

- that all States that have not done so should become parties to the Convention on the Rights of the Child immediately;
- all Governments should adopt measures to effectively implement the Convention, the Geneva Conventions and their Additional Protocols and the 1951 Convention relating to the Status of Refugees and its Protocol;
- Governments must train and educate the judiciary, police, security personnel and armed forces, especially those participating in peace-keeping operations, in humanitarian and human rights law;
- humanitarian organizations should similarly train their staff. All international bodies working in conflict zones should establish procedures for prompt, confidential and objective reporting of violations that come to their attention;
- humanitarian organizations should assist Governments in educating children about their rights;
- humanitarian agencies and organizations should seek to reach signed agreements with non-state entities, committing them to abide by humanitarian and human rights law;
- civil society should actively disseminate humanitarian and human rights law and engage in advocacy, reporting and monitoring of infringements of children's rights;
- building on existing guidelines, UNICEF should develop more comprehensive guidelines on the protection and care of children in conflict situations;
- the Committee on the Rights of the Child should be encouraged to include in its report to the General Assembly specific information on the measures adopted by States Parties to protect children in situations of armed conflict.

(A/51/306, para. 240)

These recommendations to States were reiterated in the outcome document of the United Nations General Assembly's special session on children in 2002, which also called on States to:

"Ensure that issues pertaining to the rights and protection of children are fully reflected in the agendas of peacemaking processes and in ensuing peace agreements, and are incorporated, as appropriate, into United Nations peacekeeping operations and peace-building programmes; and involve children where possible in these processes…

"Put an end to impunity, prosecute those responsible for genocide, crimes against humanity, and war crimes and exclude, where feasible, these crimes from amnesty provisions and amnesty legislation, and ensure that whenever post-conflict truth and justice-seeking mechanisms are established, serious abuses involving children are addressed and that appropriate child-sensitive procedures are provided…

"Curb the illicit flow of small arms and light weapons and protect children from landmines, unexploded ordnances and other war materiel that victimize them and provide assistance to victimized children during and after armed conflict…

"Assess and monitor regularly the impact of sanctions on children and take urgent and effective

Graça Machel's review of progress since her 1996 report on the *Impact of Armed Conflict on Children*

In September 2000, an international conference on war-affected children was held in Winnipeg, Canada, and Ms. Machel presented a review of progress made and obstacles encountered since 1996. This is her conclusion:

"Significant progress has been made since the 1996 Report on the *Impact of Armed Conflict on Children* was introduced.

"The collective energy and commitment of non-governmental organizations and other civil society groups, regional organizations, the United Nations and governments, has resulted in an impressive glossary of achievements, nationally and internationally. Children are now more central to the peace and security agenda. War crimes against children and women in conflict have been prosecuted and violations are now being documented and reported more systematically. International standards protecting children in conflict have been strengthened. Children are actively working to build peace in their communities. Efforts have been made to better target sanctions. And much more is known about the ways in which small arms and light weapons destroy children's lives. The focus of humanitarian assistance – whether it is access to food, education, water, or land and housing is shifting inexorably towards meeting the rights and needs of children affected by armed conflict.

"In spite of this progress, the assaults against children continue. An estimated 300,000 children are still participating in armed combat. Children in 87 countries live amid the contamination of more than 60 million landmines. At least 20 million children have been uprooted from their homes. Girls and women continue to be marginalized from mainstream humanitarian assistance and protection. Humanitarian personnel continue to be targeted and killed. Millions of children are abandoned to cope with the multiple and compounded effects of armed conflict and HIV/AIDS. Hundreds of thousands of children Small arms and light weapons continue to proliferate excessively. Millions of children are scarred, physically and psychologically.

"In tolerating this scourge of war against children we ourselves become complicit. Power and greed can never be an excuse for sacrificing children. No one – not the United Nations, not regional organizations, not governments, nor civil society groups – has moved quickly enough or done enough. The international community, in all of its manifestations, must adopt a new sense of urgency. The Security Council must lead the international community with speed to embrace the recommendations in this review and to prevail against impunity for crimes committed against children. Children's protection should not have to be negotiated. Those who wage, legitimize and support wars must be condemned and held to account. Children must be cherished, nurtured and spared the pernicious effects of war. Children can't afford to wait."

(The Machel Review 1996-2000, Conclusion, A/55/749, p. 61)

measures in accordance with international law with a view to alleviating the negative impact of economic sanctions on women and children…" (Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, paras. 21, 23, 26 and 30)

The United Nations Special Representative

One outcome of the study was that, on the recommendation of the United Nations General Assembly, in 1997 the Secretary-General appointed a Special Representative for Children and Armed Conflict (Mr. Olara Otunnu, who was replaced in 2006 by Ms Radhika Coomaraswamy).

The Special Representative is mandated to work closely with the Committee on the Rights of the Child, and to report annually to the General Assembly and the Commission on Human Rights (now the Human Rights Council). The Special Representative also takes a leading role in preparing the Secretary-General's reports to the Security Council on children and armed conflict. In 2001 the Security Council endorsed a proposal to list parties that use children in situations of armed conflict; and since then the Secretary-General has presented annual lists of offending parties that recruit and use children.

In 2005 the Special Representative proposed to the Commission on Human Rights (now Council)

that the United Nations and national governments should monitor and report on six priority areas of concern, which "constitute especially egregious violations against children". These are:

- killing or maiming of children;
- recruiting or using child soldiers;
- attacks against schools or hospitals;
- rape and other grave sexual violence against children;
- abduction of children;
- denial of humanitarian access to children.

The report observes that, although the Security Council and other United Nations bodies have responsibility for the prevention of these violations, "Governments have the most direct formal, legal and political responsibility to ensure the protection of all children exposed to armed conflict within their countries. It is important to stress both the centrality and the immediacy of the role of national authorities of providing effective protection and relief to all children in danger. In this regard, national Governments constitute the first 'destination for action', the first line of response. Any actions by United Nations entities and international NGOs at the country level should always be designed to support and complement the protection and rehabilitation roles of national authorities, never to supplant them. And in situations where national protection institutions have been greatly weakened by the experience of protracted armed conflict, international partners should make it a priority to support the rebuilding of local institutions and capacities for protection and rehabilitation." (Report of the Special Representative of the Secretary-General for Children and Armed Conflict to the sixtieth session of the Commission on Human Rights, E/CN.4/2005/77, paras. 15 and 55)

Optional Protocol on the involvement of children in armed conflict

The Optional Protocol to the Convention on the Rights of the Child, adopted unanimously by the United Nations General Assembly in 2000, came into force in 2002 and, by June 2007, had over one hundred ratifications or accessions. The Protocol emphasizes in its Preamble that "to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child, there is a need to increase the protection of children from involvement in armed conflict" (see Appendix 2, page 692). States Parties to the Protocol must report to the Committee within two years of ratification; thereafter they must include information on implementation in their five-yearly Periodic Reports under the Convention. (For full commentary, see page 659 and for *Reporting Guidelines*, CRC/OP/AC/11, see page 704).

The Optional Protocol requires States Parties to "take all feasible measures" to ensure that members of their armed forced aged under 18 do not take a direct part in hostilities (article 1), and ensure that under-18-year-olds are not compulsorily recruited into their armed forces (article 2). They must deposit a binding declaration on ratification setting out the minimum age for voluntary recruitment and safeguards adopted to ensure that such recruitment is not forced or coerced. They are required to raise the age for voluntary recruitment from 15 "in years" (article 3).

ILO Worst Forms of Child Labour Convention (No.182)

In 1999, the General Conference of the International Labour Organization adopted the Worst Forms of Child Labour Convention (No.182) and Recommendation (No.190). For the purposes of this Convention, the term "worst forms of child labour" includes "forced or compulsory recruitment of children for use in armed conflict" (see article 32, page 479).

By August 2007, 165 countries had ratified this Convention. Countries ratifying this Convention must take "time-bound measures" – immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour, including rehabilitating the children concerned and addressing root causes. ILO's International Programme on the Elimination of Child Labour (IPEC) focuses on the social rehabilitation of demobilized child soldiers and runs interregional projects involving many of the States who have signficant numbers of child soldiers.

Security Council resolutions on children and armed conflict

In August 1999, the Security Council adopted an unprecedented resolution, expressing "its grave concern at the harmful and widespread impact of armed conflict on children and the long-term consequences this has for durable peace, security and development". It made detailed recommendations for action by all parties to armed conflicts and others (Security Council, S/RES/1261(1999)). It asked the United Nations Secretary-General to submit a report to it on implementation by July 2000. This initial report emphasized the disproportionate impact of armed conflict on

children. The Security Council requested subsequent reports from the Secretary-General, submitted in 2002, 2003, 2005 and 2006.

The Security Council issued four further resolutions on children and armed conflict: resolutions 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004) and 1612 (2005); these reiterate points made in earlier resolutions, as well as providing new initiatives. The resolutions include requests to States, where child soldiers are used, for action plans regarding their efforts to end the practice, and express the Security Council's determination to consider targeted measures against parties that fail to show progress in ending the use of child soldiers. The 2005 resolution (S/RES/1314(2000) requested a formal monitoring and reporting mechanism to document abuses against children in armed conflict (specifically including killing and maiming of children, recruiting or using child soldiers, attacks against schools or hospitals, sexual violence, abduction and denial of humanitarian access to children). It also established a Security Council working group to consider such abuses and make recommendations for further action by the Security Council.

Comments by the Committee on the Rights of the Child

At its first session in September/October 1991 the Committee on the Rights of the Child decided to hold its first Day of General Discussion on "Children in armed conflict", enabling the Committee to make various comments that aid interpretation of article 38 and of the rest of the Convention in relation to armed conflict. The Committee proposed, in examining States Parties' reports, that it would:

- welcome declarations made by some States Parties that they would not recruit under-18-year-olds;
- emphasize the need for information on the legislation and practice of States Parties on the application of article 38;
- seek information under article 41 on whether the most conducive norms are applied, or encourage development of more protective provisions in national law;
- encourage States that allow recruitment under 18 to consider how this situation takes the best interests of the child as the primary consideration;
- emphasize and encourage all States to consider in continuous monitoring whether all necessary and appropriate measures have been adopted to ensure the full realization of the rights of the child to all children under their jurisdiction.

(Committee on the Rights of the Child, Report on the second session, September/October 1992, CRC/C/10, paras. 61 *et seq.)*

The Committee also highlighted the important role education played in conflict resolution, and this point is also made in the Committee's first General Comment on article 29(1) "The aims of education":

"The values embodied in article 29(1) are relevant to children living in zones of peace but they are even more important for those living in situations of conflict or emergency. As the Dakar Framework for Action notes, it is important in the context of education systems affected by conflict, natural calamities and instability that educational programmes be conducted in ways that promote mutual understanding, peace and tolerance, and that help to prevent violence and conflict…" (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 16)

The Committee's General Comment No. 3 on "HIV/AIDS and the rights of the child" highlights the vulnerability of children in armed conflict:

"… The Committee considers that the relationship between HIV/AIDS and the violence or abuse suffered by children in the context of war and armed conflict requires specific attention. Measures to prevent violence and abuse in these situations are critical, and States Parties must ensure the incorporation of HIV/AIDS and child rights issues in addressing and supporting children – girls and boys – who were used by military or other uniformed personnel to provide domestic help or sexual services, or who are internally displaced or living in refugee camps. In keeping with States Parties' obligations, including under articles 38 and 39 of the Convention, active information campaigns, combined with the counselling of children and mechanisms for the prevention and early detection of violence and abuse, must be put in place within conflict- and disaster-affected regions, and must form part of national and community responses to HIV/AIDS." (Committee on the Rights of the Child, General Comment No. 3, 2003, CRC/GC/2003/3, para. 38)

The Committee's General Comment No. 6 on "Treatment of unaccompanied and separated children outside their country of origin" states that such children who are fleeing armed conflict are entitled to refugee status and that child soldiers should be treated as victims, not criminals:

"Child soldiers should be considered primarily as victims of armed conflict. Former child soldiers, who often find themselves unaccompanied or separated at the cessation of the conflict or following defection, shall be given all the necessary support services to enable reintegration into normal life, including necessary psychosocial counselling. Such children shall be identified and demobilized on a priority basis during any identification and separation operation. Child soldiers, in particular, those who are unaccompanied or separated, should not normally be interned, but rather, benefit from special protection and assistance measures, in particular as regards their demobilization and rehabilitation. Particular efforts must be made to provide support and facilitate the reintegration of girls who have been associated with the military, either as combatants or in any other capacity.

"If, under certain circumstances, exceptional internment of a child soldier over the age of 15 years is unavoidable and in compliance with international human rights and humanitarian law, for example, where she or he poses a serious security threat, the conditions of such internment should be in conformity with international standards, including article 37 of the Convention and those pertaining to juvenile justice, and should not preclude any tracing efforts and priority participation in rehabilitation programmes.

"As under-age recruitment and participation in hostilities entails a high risk of irreparable harm involving fundamental human rights, including the right to life, state obligations deriving from article 38 of the Convention, in conjunction with articles 3 and 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, entail extraterritorial effects and States shall refrain from returning a child in any manner whatsoever to the borders of a State where there is a real risk of under-age recruitment or participation, directly or indirectly, in hostilities.

"Reminding States of the need for age and gender-sensitive asylum procedures and an age and gender-sensitive interpretation of the refugee definition, the Committee highlights that under-age recruitment (including of girls for sexual services or forced marriage with the military) and direct or indirect participation in hostilities constitute a serious human rights violation and thereby persecution, and should lead to the granting of refugee status where the well-founded fear of such recruitment or participation in hostilities is based on 'reasons of race, religion, nationality, membership of a particular social group or political opinion' (article 1A (2), 1951 Refugee Convention)." *(Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, paras. 56 to 59)*

Armed conflicts are also a major cause of disability, as the Committee notes in its General Comment No. 9 on "The rights of children with disabilities":

"Armed conflicts and their aftermath, including availability of and accessibility to small arms and light weapons, are also major causes of disabilities. States Parties are obliged to take all necessary measures to protect children from the detrimental effects of war and armed violence and to ensure that children affected by armed conflict have access to adequate health and social services, including psychosocial recovery and social reintegration. In particular, the Committee stresses the importance of educating children, parents and the public at large about the dangers of landmines and unexploded ordnance in order to prevent injury and death. It is crucial that States Parties continue to locate landmines and unexploded ordnance, take measures to keep children away from suspected areas, and strengthen their de-mining activities and, when appropriate, seek the necessary technical and financial support within a framework of international cooperation, including from United Nations agencies." *(Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, para. 55)*

Results of armed conflict

The *Guidelines for Periodic Reports (Revised 2005)* asks States to submit the following disaggregated data on article 38:

- *"... (a) Number and percentage of persons under 18 who are recruited or enlist voluntarily in the armed forces and proportion of those who participate in hostilities;*
- *Number and percentage of children who have been demobilized and reintegrated into their communities; with the proportion of those who have returned to school and been reunified with their families;*
- *Number and percentage of child casualties due to armed conflict;*
- *Number of children who receive humanitarian assistance;*
- *Number of children who receive medical and/or psychological treatment as a consequence of armed conflict."* *(CRC/C/58/Rev.1, para. 22, p. 16)*

During its examination of States Parties' reports, the Committee has frequently had cause to comment at the direct and indirect effects of armed conflict on children. For example:

"The Committee is highly alarmed by the number of children who were killed in armed conflicts in the State Party. The Committee

notes with grave concern the reports of abduction and forcible conscription of children by the armed groups for political indoctrination and for use as combatants, informants, cooks or porters and as human shields. The Committee is equally concerned that Government forces target under-18s suspected of being members of the armed groups and about the highly alarming reports of disappearances and arbitrary detention and of Government forces allegedly using children as spies and messengers. The Committee is also deeply concerned that there are reports of detention of children under the 2004 amendment to the Terrorist and Disruptive Activities (Control and Punishment) Ordinance. The Committee is concerned at the direct effects of this violence on child victims, including child combatants, and about the severe physical and psychological trauma inflicted upon them. The Committee also expresses concern about children who were separated due to the conflict, including children who have fled to India, and that little efforts have been taken by the State Party to reunite these families. The Committee is also concerned about the negative impact of the armed conflict on food supplies, education and health care." (Nepal CRC/C/15/Add.261, para. 81)

"The Committee, while welcoming the ratification of the Optional Protocol to the CRC on the involvement of children in armed conflict, is seriously concerned over the grave consequences the internal armed conflict has on children in Colombia, causing them serious physical and mental injury and denying them the enjoyment of their most basic rights. The Committee notes as positive the development of educational kits distributed to schools in high-risk conflict areas by the army, as well as certain efforts to improve the reintegration and recovery of demobilized child soldiers. However, the Committee considers that considerable measures for demobilized and captured child soldiers remain lacking. In particular, the Committee is concerned over:
(a) large-scale recruitment of children by illegal armed groups for combat purposes and also as sex slaves;
(b) interrogation of captured and demobilized child soldiers and delays by the military in handing them over to civilian authorities in compliance with the time frame of maximum 36 hours stipulated in the national legislation;
(c) the use of children by the army for intelligence purposes;
(d) inadequate social reintegration, rehabilitation and reparations available for demobilized child soldiers;
(e) the number of children who have become victims of landmines;
(f) the failure of the current legal framework for the ongoing negotiation with the paramilitaries to take into account the basic principles of truth, justice and reparations for the victims;
(g) general lack of adequate transparency in consideration of aspects relating to children in the negotiations with illegal armed groups, resulting in continuous impunity for those responsible for recruitment of child soldiers." (Colombia CRC/C/COL/CO/3, para. 80)

Armed conflicts cause population movements. People flee in large numbers, becoming refugees or internally displaced people. The study on the *Impact of Armed Conflict on Children* suggests that "at least half of all refugees and displaced people are children. At a crucial and vulnerable time in their lives, they have been brutally uprooted and exposed to danger and insecurity. In the course of displacement, millions of children have been separated from their families, physically abused, exploited and abducted into military groups, or they have perished from hunger and disease" (A/51/306, para. 66). Article 22 of the Convention covers the particular rights of refugee children (see page 305). Technically refugees are people who have fled across national frontiers, but the Committee is equally concerned about children who have been displaced within their own country:

"The Committee is deeply concerned by the impact of communal conflicts on children in Nigeria. The Committee is alarmed by the reports of indiscriminate extrajudicial killings in these conflicts, where children as well as adults are routinely killed, shot to death and burnt. The Committee is seriously concerned at the direct effects of this violence on child victims, including child combatants, and about the severe physical and psychological trauma inflicted upon them. The Committee notes that the State Party has signed but not yet ratified the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict." (Nigeria CRC/C/15/Add.257, para. 65)

"The Committee remains concerned that children living in Chechnya and the Northern Caucasus (and in particular internally displaced children) remain very deeply affected by the conflict, in particular with regard to their rights to education and health. The Committee is also concerned about reported cases of arrests and disappearances by security agents of young persons suspected of being associated with insurgency groups. The Committee is concerned that there has been limited identification and marking of mined areas, or efforts to clear mines, notwithstanding the recent ratification by the State Party of Protocol II, as amended, to the Convention on Prohibitions or Restrictions

on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects." *(Russian Federation CRC/C/RUS/CO/3, para. 68)*

The Graça Machel study notes that children affected by armed conflict are often also victims of sexual abuse and exploitation: "Rape poses a continual threat to women and girls during armed conflict, as do other forms of gender-based violence, including prostitution, sexual humiliation and mutilation, trafficking and domestic violence..." (A/51/306, paras. 91 *et seq*.) The study also provides detailed recommendations for preventing sexual exploitation and gender-based violence (for further discussion see article 34, page 513). The Rome Statute of the International Criminal Court (see below, page 584) includes rape, sexual slavery, enforced prostitution and other grave forms of sexual violence within its definition of crimes against humanity (article 7).

Recruitment of under-18-year-olds

The Committee has emphasized since 1992 that it is of the opinion that the Convention requires protection of all children under 18 from direct or indirect involvement in hostilities and that no under-18-year-olds should be recruited into armed forces (Committee on the Rights of the Child, General Discussion on children in armed conflict, Report on the second session, September/October 1992, CRC/C/10, para. 67 and preamble to draft Optional Protocol). This has been reflected in comments to many States, severely condemning any recruitment of child soldiers. For example:

"The Committee is deeply concerned that about one third of the annual intake of recruits into the armed forces are below the age of 18 years, that the armed services target young people and that those recruited are required to serve for a minimum period of four years, increasing to six years in the case of very young recruits." *(United Kingdom CRC/C/15/Add.188, para. 53)*

"... While noting with appreciation that the minimum age of compulsory recruitment is 19 years, the Committee notes with concern that the minimum age of voluntary recruitment, both in regular armed forces and in unregulated paramilitary forces, is unclear. The alleged cases of persons under 18 years of age being used by Government-allied paramilitary forces and armed political groups are cause for serious concern." *(Algeria CRC/C/15/Add.269, para. 70)*

"... The Committee is also concerned at the regulation 'On enrolling under-age citizens of the Russian Federation as wards of military units and providing them with essential allowances', which permits boys between the ages of 14 and 16 to be voluntarily recruited and attached to military units." *(Russian Federation CRC/C/RUS/CO/3, para. 70)*

As indicated previously (page 574), a dispute over the language of article 38 and the protection afforded to 15- to 18-year-olds took place in the Working Group which drafted the Convention.

Article 38 refers to recruitment rather than to conscription. Article 38, as drafted, permits the recruitment of under-18-year-olds, but conscription is not mentioned and should not form part of state law or practice. Compelling children (i.e., all under-18-year-olds) to join armed forces is identified as one of the worst forms of child labour under article 3 of ILO Convention (No.182) and arguable amounts to abduction in breach of article 35.

A number of States made declarations, welcomed by the Committee, which expressed concern that article 38 did not prohibit the involvement in hostilities and the recruitment into armed forces of all under-18-year-olds. For example:

"The Principality of Andorra deplores the fact that the Convention on the Rights of the Child does not prohibit the use of children in armed conflicts. It also disagrees with the provisions of article 38, paragraphs 2 and 3, concerning the participation and recruitment of children from the age of 15."

"Concerning article 38 of the Convention, the Argentine Republic declares that it would have liked the Convention categorically to prohibit the use of children in armed conflicts; such a prohibition exists in its domestic law which, by virtue of article 41 of the Convention, it shall continue to apply in this regard."

"Austria will not make any use of the possibility provided for in article 38, paragraph 2, to determine an age limit of 15 years for taking part in hostilities as this rule is incompatible with article 3, paragraph 1, which determines that the best interests of the child shall be a primary consideration..." (Also declarations from Colombia, Germany, Netherlands, Poland, Spain, Uruguay – CRC/C/2/Rev.8, pp. 13 to 43.)

Recruitment does not necessarily mean that children are deployed as soldiers. The study on the *Impact of Armed Conflict on Children* notes that children are also forced to serve in supporting roles, as cooks, porters, messengers and spies. Most are adolescents, though many child soldiers are 10 years old or younger: "While the majority

are boys, girls also are recruited. The children most likely to become soldiers are those from impoverished and marginalized backgrounds and those who have become separated from their families." (A/51/306, paras. 34 and 35. The study provides a detailed commentary and proposals to end recruitment of children.) Since the study, the Committee has expressed grave concern about this practice, which continues in many zones of conflict. For example:

"... the Committee expresses its extremely deep consternation at the very high numbers of children who have been forcibly recruited into armed forces and armed groups, by all parties involved in the conflict, including children as young as nine years old. The Committee is also concerned that these children have been forced to carry goods and weapons, guard the checkpoints and often fight in the frontline, while girls have been raped, forced to become servants of the soldiers as well as become combatants..."
(Liberia CRC/C/15/Add.236, para. 58)

Principles concerning recruitment

A seminar on prevention of recruitment of children into the armed forces and demobilization and social reintegration of child soldiers in Africa produced a set of principles in 1997 (the "Cape Town Principles") adopted by participants in a seminar organized by UNICEF and the NGO Subgroup of the NGO Group on the Convention on the Rights of the Child. These propose that 18 should be the minimum age for any participation in hostilities and for all forms of recruitment into all armed forces and armed groups, and that the Optional Protocol to the Convention (see page 659) should be supported and ratified.

In 2006 UNICEF led a process to revise the Cape Town Principles which resulted in two documents: *The Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups ("the Paris Commitments")* and a complementary and lengthier document entitled *The Paris Principles – Principles and guidelines on children associated with armed forces or armed groups* (UNICEF, February 2007; see also www.unicef.org/media/files/ParisPrinciples310107English.pdf). These guidelines provide advice on specific groups of children such as girls, children with disabilities and refugee or internally displaced children. As regards war crimes, the guidelines advocate no impunity for adults who have recruited or used children in warfare, but urge States to avoid the prosecution of children. Prevention, family reunification and rehabilitation are also given substantial attention.

Prosecution for war crimes

The International Criminal Court

The Rome Statute of the International Criminal Court, adopted on 17 July 1998, characterizes as a war crime conscripting or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities in international armed conflicts. The definition also applies to conscription or enlisting of under-15-year-olds into armed forces or groups in non-international armed conflicts (article 8).

The United Nations first recognized the need for an international criminal court in a General Assembly resolution in 1948 (A/RES/260(III), 9 December 1948). In December 1989, in response to a request from Trinidad and Tobago, the General Assembly asked the International Law Commission to resume work on establishment of an international criminal court. In 1993, the conflict in the former Yugoslavia erupted and war crimes, crimes against humanity and genocide again commanded international attention. The United Nations Security Council established the *ad hoc* International Criminal Tribunal for the former Yugoslavia. In 1994 the International Law Commission submitted a draft statute for an international criminal court to the General Assembly. A Preparatory Committee on the Establishment of an International Criminal Court met from 1996 to 1998, when it finalized a draft. The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court met in Rome, Italy, from 15 June to 17 July 1998 to finalize and adopt the Statute of the Court. It entered into force on 11 April 2002 once 60 States had ratified it. For full details and text of the Statute, see www.un.org/law/icc.

The Court, situated at the Hague, has jurisdiction over genocide, crimes against humanity, war crimes and the crime of aggression, which are defined in detail in the Statute, with various references to children. For example, "genocide" is defined as various acts "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group". These acts include "imposing measures intended to prevent births within the group" and "forcibly transferring children of the group to another group" (article 6). Other elements of the definitions intended to reinforce protection of civilians are particularly relevant to children.

By the end of 2006 the International Criminal Court had issued arrest warrants for several commanders of armed groups for the war crime of recruiting or using children in hostilities.

Prosecutions by States Parties

The Committee is concerned about instances of children failing to receive compensation or redress for the sufferings they have experienced in conflict (see, for example Croatia CRC/C/15/Add.243, paras. 84 and 85, and Israel CRC/C/15/Add.195, paras. 58 and 59). It also recommends that States prosecute those alleged to have violated children's rights during conflicts (for example Indonesia CRC/C/15/Add.223, para. 243).

The issue of whether or not to try children who have committed war crimes, or crimes against humanity while participating in armed conflict, has created substantial controversy, in part since these almost invariably have arisen because they have been illegally conscripted and forced to perpetrate these acts. The International Criminal Court specifically excluded children under the age of 18 from its jurisdiction, but some States have retained this option.

The Committee raised concerns about children charged with war crimes with Rwanda:

"The Committee is extremely concerned that persons below the age of 18 at the time of their alleged war crime have not yet been tried, have been detained in very poor conditions, some for a very long time, and are not provided with appropriate services to promote their rehabilitation. The Committee notes the establishment of gacaca courts but is deeply concerned that no specific procedure has been established for those who were under 18 at the time of their alleged crime, as required by article 40, paragraph 3, of the Convention, and are still in what could be considered as pre-trial detention.
"In the light of articles 37, 40 and 39 of the Convention and other relevant international standards, the Committee recommends that the State Party take all necessary measures to complete within six months all pending legal proceedings against persons who were below the age of 18 at the time they allegedly committed war crimes." *(Rwanda CRC/C/15/Add.234, paras. 70 and 71)*

Articles 37 and 40 address the rights of children who are alleged to have committed offences (see pages 547 and 601). These articles, taken together with the United Nations rules and guidelines on juvenile justice and the Committee's General Comments No. 6 on "Treatment of unaccompanied and separated children outside their country of origin" (para. 56) and No. 10 on "Children's rights in Juvenile Justice" (para. 4), make clear that retribution has no place in the treatment of child soldiers and that, although such children may be held accountable for crimes, any hearings to determine responsibility must be fair and entirely separate from the adult justice system and that the subsequent treatment of the child must be focused on achieving his or her rehabilitation, with deprivation of liberty used only as a last resort for the shortest appropriate time.

Anti-personnel mines

The Committee and other bodies have noted the devastating effects that anti-personnel landmines have had on children, and congratulate States that have aided the international campaign against them.

In October 1996, the Canadian Government initiated what has been labelled "The Ottawa process", at an international conference in Ottawa, inviting all Governments to return to Ottawa in December 1997 to sign a legally binding treaty banning anti-personnel landmines. Preparatory meetings were held in Vienna, Bonn and Brussels during the Spring of 1997 and, at a diplomatic conference in Oslo in September 1997, 89 Governments agreed on a draft Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction. This Convention opened for signature in Ottawa on 3 December 1997 and formally came into effect in March 1999 following the first 40 ratifications.

The Convention's most significant provisions are:

- a complete prohibition on the use, stockpiling, production and transfer of anti-personnel mines (APMs), aside from the continued use of anti-vehicle mines equipped with anti-handling devices and the use of APMs for training in mine clearance;
- stockpiled APMs to be destroyed within four years of entry into force;
- APMs within minefields to be cleared within 10 years of entry into force (States Parties may, however, be granted an extension of the time period, with an additional 10 years);
- an obligation to report total numbers of stockpiled APMs, location of minefields, etc.;
- States Parties in a position to do so to provide assistance with mine clearance, rehabilitation of mine victims, etc.;
- a simple verification procedure, including the possibility of sending out fact-finding missions in cases of suspected violations of the Convention.

The Committee on the Rights of the Child encourages States Parties to become parties

to this Convention and to take priority action on any unexploded ordnance (including cluster bombs as well as mines), given the particular vulnerability of children to their lethal effects (see also the Committee's General Comment No. 9 on "The rights of children with disabilities" (CRC/C/GC/9, paras. 23, 55 and 78). For example:

"While taking into consideration the efforts made by the State Party, the Committee notes with concern the situation with respect to landmines, and the threat they pose to the survival and development of children. The Committee stresses the importance of educating parents, children and the general public about the dangers of landmines and of implementing rehabilitation programmes for victims of landmines. The Committee recommends that the State Party review the situation with respect to landmines within a framework of international cooperation, including from United Nations agencies. The Committee further suggests that the State Party become a party to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and of Their Destruction (1997)." (Iraq CRC/C/15/Add.94, para. 28)

"The Committee expresses grave concern at the significant number of landmines still in the State Party, especially in the western regions along the border zones. The Committee notes with concern the insufficient efforts made by the State Party to locate and clear these landmines and to protect children in this regard. Concern is also expressed about the inadequate programmes to facilitate the care and rehabilitation of child victims of landmines and the insufficient efforts to raise awareness and to prevent accidents involving children and landmines.
"The Committee strongly recommends that the State Party take all appropriate measures to locate and clear the landmines in its territory, and promote awareness about the potential dangers. The State Party is recommended to undertake a study to determine the impact of landmines in its territory, particularly as this affects children living in the western regions along the border. The Committee recommends that the State Party reinforce its efforts to accede to the Convention on the Prohibition of the Use, Production, Transfer and Stockpiling of Anti-Personnel Landmines and on Their Destruction, which it signed in December 1997. Additionally, the State Party is encouraged to seek technical cooperation with the United Nations Mine Action Service (UNMAS), among others." (Georgia CRC/C/15/Add.124, paras. 58 and 59)

"Although the number is constantly decreasing, the Committee is concerned at the information that between 1992 and August 2000 a total of 4,371 persons had been victims of landmines, including about 300 children. The Committee is also concerned at the information that there are still 1 million mines in approximately 30,000 minefields throughout the country, including around schools and in areas where children play and that, according to Red Cross sources, every month 50 children suffer from the consequences of this situation. Furthermore, the Committee is concerned at the situation of children who were victims of the armed conflict, in particular with regard to the consequences of the conflict on their physical and psychological status.
"The Committee recommends the State Party to continue carrying out mine-awareness campaigns, undertake as a matter of priority demining programmes and extend the psychological and social assistance to children who have been affected by the explosion of mines and other consequences of the armed conflict." (Bosnia and Herzegovina CRC/C/15/Add.260, paras. 63 and 64)

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

article 38

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 38, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 38 is relevant to **departments of defence, foreign affairs, home affairs, education, social welfare**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 38 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 38 likely to include training for **all members of armed forces, including peacekeeping forces, social workers, aid workers, psychologists and health workers**)?

• Specific issues in implementing article 38

Has the State ratified/acceded to

- ☐ the four Geneva Conventions of 1949?
- ☐ Additional Protocol I?
- ☐ Additional Protocol II?
- ☐ the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction?
- ☐ the Optional Protocol to the Convention on the involvement of children in armed conflict?
- ☐ other international instruments relevant to the protection of children affected by armed conflict?

- ☐ Has the State taken appropriate steps to ensure that children under the age of 15 do not take a direct part in hostilities?
- ☐ Has the State taken appropriate steps to ensure that children under the age of 18 do not take a direct or indirect part in hostilities?
- ☐ Has the State ensured that no child under the age of 18 is conscripted into the armed forces?

How to use the checklist, *see page XIX*

article 38

Has the State adopted legislation and other appropriate measures
- ☐ to prevent the recruitment of children who have not attained the age of 15 into the armed forces?
- ☐ to give priority to the oldest in recruiting any child under the age of 18?
- ☐ to prevent the recruitment of any child under 18 into the armed forces?

☐ Has the State taken measures to prohibit and prevent the recruitment of any child under the age of 18 by non-government forces?

☐ Has the State ensured that military schools do not recruit students below the age of 18?

☐ Has the State ensured that any military schools which do recruit students below the age of 18 are supervised by the ministry of education rather than of defence?

☐ Has the State ensured that military schools respect the aims for education set out in article 29 of the Convention?

☐ Has the State taken all feasible measures to ensure protection and care of all children affected by armed conflict?

☐ Has the State reviewed and taken appropriate action on the recommendations of the study on the *Impact of Armed Conflict on Children?*

☐ In relation to article 38(4) of the Convention, has the State taken national, bilateral and international action to protect children from anti-personnel mines?

Reminder: **The Convention is indivisible and its articles interdependent. Article 38 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 38 include:

Article 19: protection from all forms of violence
Article 22: refugee children
Article 29: aims of education
Article 34: protection from sexual exploitation
Article 35: abduction and trafficking
Article 37: protection from torture, cruel, inhuman or degrading treatment or punishment
Article 39: rehabilitative care for victims of armed conflict
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Rehabilitation of child victims

Text of Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 39 requires measures to help child victims of:

- any form of violence, neglect, exploitation or abuse (for example, as detailed in articles 19, 32, 33, 34, 35, 36);
- torture or any other form of cruel, inhuman or degrading treatment or punishment (article 37);
- armed conflict (article 38).

The article provides that recovery and reintegration must take place in an environment that fosters the health, self-respect and dignity of the child. The general principles of the Convention on the Rights of the Child require that such measures must be available without discrimination to all child victims; the best interests of the child must be a primary consideration; the maximum survival and development of the child must be ensured; and the views of the child should be respected – for example in planning and implementing programmes, as well as in individual cases. Other rights in the Convention, to health and health care services (article 24), to education (article 28) and to an adequate standard of living (article 27) are relevant to this article's implementation, as is the obligation under article 20 to provide special care and assistance to children temporarily or permanently deprived of their family environment.

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted in 2000, requires States Parties to take appropriate measures to protect the rights and interests of child victims of the practices prohibited under the Protocol, including for their rehabilitation. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, also adopted in 2000, includes a section on the protection of victims of trafficking.

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict also requires ratifying States to

Summary

give children appropriate assistance, where necessary, for their recovery and social integration.

In Concluding Observations on States Parties' reports, the Committee has frequently grouped article 39 with articles 37 and 40. However, the Committee has indicated that measures are required under article 39 for all children who are victims of the treatment or punishment prohibited in article 37 whether it occurs within the family, in institutions or the community. Article 40(1) requires that all children who come within the scope of the juvenile justice system ("alleged as, accused of, or recognized as having infringed the penal law") must be treated in a manner consistent with "promoting the child's reintegration and the child's assuming a constructive role in society". Article 19, requiring the protection of children from all forms of physical or mental violence, also mentions treatment and follow-up. Article 25 provides children who have been placed for care, protection or treatment – including for purposes of rehabilitation – with a right to a periodic review.

The Committee has indicated that the wording of article 39 requires consideration of a wide range of potential child victims. In addition to the situations specifically mentioned in article 39, the Committee has referred to issues such as victims of violence, refugee children (article 22), child labour and forced labour (article 32), abuse and trafficking of drugs (article 33), family conflict (article 9) and the sale and trafficking of children (article 35), as well as children involved in the system of juvenile justice (articles 37 and 40). ■

Rehabilitating child victims

The report of the United Nations Secretary-General's Study on Violence Against Children recommends that States "… should provide accessible, child-sensitive and universal health and social services, including pre-hospital and emergency care, legal assistance to children and, where appropriate, their families when violence is detected or disclosed. Health, criminal justice and social service systems should be designed to meet the special needs of children." (Report of the independent expert for the United Nations study on violence against children, United Nations, General Assembly, sixty-first session, August 2006, A/61/299, para. 102)

The complementary *World Report on Violence against Children* notes: "The impact of violence can stay with its victims throughout their lifetime. Early access to quality support services can help to mitigate the impact of the event on the victim, including preventing longer term consequences such as becoming a perpetrator of violence." (Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006, p. 337)

The Committee's *Guidelines for Periodic Reports (Revised 2005)* requests data on rehabilitation measures across a range of issues, asking States to provide it with the number of children who:

- receive medical and/or psychological treatment as a consequence of armed conflict;
- participate in juvenile justice programmes of special rehabilitation;
- are employed in the worst forms of child labour and have access to recovery and reintegration assistance, including free basic education and/or vocational training;
- receive treatment assistance and recovery services as a result of substance abuse
- have access to rehabilitation programmes having been involved in sexual exploitation including prostitution, pornography and trafficking (see page 703, paras. 22, 23 and 25 to 27).

The Committee on the Rights of the Child has frequently commented on the lack of adequate measures to rehabilitate child victims. For example, in its Concluding Observations to Senegal the Committee recommended rehabilitative measures in relation to four different groups of child victims:

"The Committee recommends that the State Party take all appropriate measures, including through international cooperation, if necessary, to address the physical, psychological and social reintegration needs of children affected by the conflict…
"The Committee recommends that the State Party address the rights and needs of street children and begging children and facilitate their reintegration into society by… developing and implementing with the active involvement of street and begging children and NGOs a comprehensive policy which should address the root causes, in order to discourage, prevent and reduce child begging, and which should provide begging and street children with necessary protection, adequate health-care services, education and other social reintegration services.
"The Committee recommends that the State Party… reinforce legal measures protecting children victims of sexual exploitation, including trafficking, pornography, prostitution and sex tourism; prioritize recovery assistance and ensure that education and training as well as psychological assistance and counselling are provided to victims, and

avoid that victims who cannot return to their families are institutionalized.
"The Committee recommends that the State Party take measures to prevent and reduce alcohol and drug abuse among children and to support recovery and social reintegration programmes for child victims of drug and alcohol abuse." (Senegal CRC/C/SEN/CO/2, paras. 57, 59, 65 and 67)

The Committee emphasizes that there should be no discrimination in the provision of rehabilitative services to child victims, for example between children living in rural and urban areas:

"Regional disparities, including differences between rural and urban areas, exist in the provision of rehabilitation services for abused children. The Committee recommends that the State Party take all appropriate measures to implement fully the right of the child to physical and psychological recovery and social reintegration, in accordance with article 39 of the Convention." (Austria CRC/C/15/Add.98, para. 21)

The Committee expressed continued concern about the geographical variations in services to children in Austria at its Second Report (*Austria CRC/C/15/Add. 251, para. 10*).

Following its Day of General Discussion on "State violence against children" (September 2000), the Committee adopted recommendations on rehabilitation of child victims and the provision of counselling, advice and support (paras. 27 and 28). It also emphasized the importance of ensuring that children who are in need of protection are not considered as offenders (for example, in legislation dealing with abandonment, vagrancy, prostitution, migrant status, truancy and runaways) but are dealt with under child protection mechanisms (Report on the twenty-fifth session, September/October 2000, CRC/C/100, para. 688.9). In addition, in its Concluding Observations on State Parties' reports the Committee expresses concern about any child rehabilitation measures that penalize children more than they help them, such as Brunei Darussalem's treatment of children who abuse drugs or Bangladesh's treatment of children who are the victims of abuse:

"The Committee notes the State Party's non-punitive approach to victims of drug abuse, but is concerned that children abusing drugs may be placed in a closed institution for a period of up to three years." (Brunei Darussalam CRC/C/15/Add.219, para. 53)

"The Committee is concerned ... that child victims of abuse and/or exploitation are placed in 'safe custody', which may result in depriving them of their liberty for as long as 10 years." (Bangladesh CRC/C/15/Add 221, para. 49)

In relation to drug abuse, many countries have inadequate rehabilitative services even for adults, and urgently need to develop services tailored specifically for children (see article 33, page 503).

Child victims of neglect, exploitation or abuse

Various articles of the Convention provide protective rights, requiring States to take a range of actions to prevent violence, neglect and exploitation of children. This is further emphasized in the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (see page 669). States Parties to the Protocol must adopt "appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process…" (article 8) and take a range of actions to protect the victims of violence, neglect and exploitation (see box, page 592.)

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, also adopted in 2000, includes a section on "Assistance to and protection of victims of trafficking in persons", requiring "assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders…" (article 6.2 (b), see box page 594).

The Agenda for Action adopted by the First World Congress against Commercial Sexual Exploitation of Children (Stockholm, Sweden, 1996, endorsed at the Second World Congress in Yokohama, Japan, in 2001) includes a section on "Recovery and Reintegration", emphasizing that a non-punitive approach should be adopted to child victims of commercial sexual exploitation and proposing:

- victims and their families should receive social, medical and psychological counselling and other support;
- medical personnel, teachers, social workers and relevant NGOs helping child victims should receive gender-sensitive training;
- effective action to prevent and remove social stigmatization of child victims and their families;
- the facilitation of recovery and reintegration whenever possible in families and communities;
- promotion of alternative means of livelihood for child victims and their families so as to prevent further commercial sexual exploitation. (A/51/385, para. 5).

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (adopted in 2000)

Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:
   (a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
   (b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
   (c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
   (d) Providing appropriate support services to child victims throughout the legal process;
   (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
   (f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
   (g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.
2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.
3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.
4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.
5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.
6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

(For full text, see Appendix 2, page 695. For commentary, see page 669.)

Official systems that aim to protect children must also promote their recovery. In 2005 the United Nations Economic and Social Council adopted the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (resolution 2005/20) (see page 673). These require that child victims involved in criminal or judicial procedures against alleged abusers are treated with dignity and compassion, protected from discrimination, hardship or danger to themselves and offered reparation.

The Committee's General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment" stresses not only that prosecutions should be child sensitive, but also that:

"It is the Committee's view that prosecution and other formal interventions (for example, to remove the child or remove the perpetrator) should only proceed when they are regarded both as necessary to protect the child from significant harm and as being in the best interests of the affected child. The affected child's views should be given due weight, according to his or her age and maturity." *(Committee on the Rights of the Child, General Comment No. 8, 2006, CRC/C/GC/8, paras. 41 and 43)*

The Committee has noted the importance of respect for the child victim's right to privacy, in particular in cases involving abuse including sexual exploitation, and the role of the media in respecting privacy (for discussion, see article 16, page 208). It stresses the need for gender-sensitive rehabilitation undertaken by trained professionals:

"The Committee reiterates its concern … that victims of sexual exploitation do not have access to appropriate recovery and assistance services.
"The Committee recommends that the State Party… increase the number of trained professionals providing psychological counselling and other recovery services to victims…" *(Uzbekistan CRC/C/UZB/CO/2, paras. 67 and 68)*

"The Committee … remains concerned about … the insufficient programmes for the physical and psychological recovery and social rehabilitation of child victims of such abuse and exploitation.
"… the Committee recommends that the State Party… implement appropriate gender- and child-sensitive policies and programmes to prevent it and to rehabilitate child victims in accordance with the Declaration and Agenda for Action and the Global Commitment adopted at the 1996 and 2001 World Congresses against Commercial Sexual Exploitation of Children." *(Rwanda CRC/C715/Add. 234, paras. 66 and 67)*

Children with disabilities, highly vulnerable to abuse, need appropriate forms of rehabilitation. The Convention on the Rights of Persons with Disabilities provides: "States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs." (Article 16(4))

Child victims of economic exploitation

Following its Day of General Discussion on the "Economic exploitation of children", the Committee on the Rights of the Child produced a series of recommendations. These recognized that all rights in the Convention are indivisible and interrelated and that action to prevent and combat economic exploitation of children must take place within the framework of the Convention's general principles (articles 2, 3, 6 and 12). An adequate legal framework and necessary measures of implementation must be developed in conformity with the principles and provisions (see also article 32, page 479):

"Such measures will strengthen the prevention of situations of economic exploitation and of their detrimental effects on the lives of children, should be aimed at reinforcing the system of children's protection and will promote the physical and psychological recovery and social reintegration of children victims of any form of economic exploitation, in an environment which fosters the health, self-respect and dignity of the child."

In particular, the Committee recommended:

"States Parties must also take measures to ensure the rehabilitation of children who, as a result of economic exploitation, are exposed to serious physical and moral danger. It is essential to provide these children with the necessary social and medical assistance and to envisage social reintegration programmes for them in the light of article 39 of the Convention on the Rights of the Child." *(Committee on the Rights of the Child, Report on the fifth session, January 1994, CRC/C/24, pp. 39 and 43)*

The International Labour Office (ILO), in its handbook *Child labour: Targeting the intolerable*, suggests: "A child's withdrawal from work should be accompanied by a whole range of supportive measures. This is especially important if children have been stunted in their development because they were bonded, have worked practically since they were toddlers, have been prostituted or have been living and working on the streets without their families or without any stable social environment. In addition to education, training, health services and nutrition, these children need to be provided with intensive counselling, a safe environment, and often legal aid. To this end, a number of action programmes for these children have set up drop-in centres where they can stay and recuperate.

"The evidence has shown that these children need a range of professional services, from social

article 39

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted in 2000)

Article 6

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, *inter alia*, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
   (a) Information on relevant court and administrative proceedings;
   (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
   (a) Appropriate housing;
   (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
   (c) Medical, psychological and material assistance; and
   (d) Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

(For full text, see Appendix 4, page 761.)

workers and family or child therapists to psychiatrists. Volunteers or community workers also play an important part, but their work is very taxing. There is a very high turnover of field workers, and therefore they need special training and guidance. Cooperation with the police is often required, too, so that 'rehabilitated' children are not stigmatized or persecuted. Agencies have also tried with some success to reunite children with their families. In such cases, support has to be extended to the families as well. Comprehensive rehabilitation measures are badly needed and should be provided even if their cost is very high." The ILO also highlights the severe short- and long-term physical and psychological effects of child labour, including in particular hazardous work and forms of forced labour, among them commercial sexual exploitation, requiring specialist and long-term support and rehabilitation (*Child labour: Targeting the intolerable,* International Labour Conference, 86th Session 1998, ILO, Geneva, first published in 1996, pp. 54, and 9 *et seq.).*

As well as children who are economically exploited by adults, in the streets of almost every city in the world many children are to be found who are supporting themselves. As is discussed in relation to article 20, the Committee recommends States take a child-sensitive approach to rehabilitation, which seeks the cooperation and input of the children themselves (see page 286).

Children involved with juvenile justice systems

During its Day of General Discussion on the "Administration of juvenile justice" the Committee noted that

"... insufficient attention was paid to the need for the promotion of an effective system of physical and psychological recovery and social reintegration of the child, in an environment that fostered his or her health, self-respect and dignity." *(Committee on the Rights of the Child, Report on the tenth session, October/November 1995, CRC/C/46, para. 221)*

Rehabilitation and social reintegration must be the focus of all juvenile justice systems – retributive sanctions should play no part, though proportionality and the needs of public safety will be considerations (see, for example, General Comment No. 10 on "Children's rights in Juvenile Justice" (paras. 4 and 25)). As the *World Report on Violence against Children* accompanying the United Nations Study on Violence Against Children recommends: "Governments should ensure that juvenile justice systems for all children up to age 18 are comprehensive, child-focused, and have rehabilitation and social reintegration as their paramount aims." (Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006, p. 219)

The Committee on the Rights of the Child has promoted the United Nations rules and guidelines relating to juvenile justice as providing relevant standards for the implementation of the Convention, and in particular the implementation of articles 37, 39 and 40. In many cases, it has asked States Parties generally to review their juvenile justice system in the light of these articles, and of the rules and guidelines.

The Committee has made specific proposals in the light of article 39. For example:

"Recognizing the existence of psychological assistance facilities under the auspices of the Centres for Social Work, the Committee, nevertheless, remains concerned at the absence of measures to provide for the physical and psychological recovery and reintegration of children who have been the victims of crime, and of children who have participated in judicial proceedings or who have been confined in institutions.

"In the light of article 39 of the Convention, the Committee recommends that the State Party urgently establish appropriate programmes to provide for the physical and psychological recovery and reintegration of such children and that these mechanisms be used in the administration of juvenile justice."

(The former Yugoslav Republic of Macedonia CRC/C/15/Add.118, paras. 48 and 49)

The Riyadh Guidelines for the Prevention of Juvenile Delinquency (see page 739) proposes that comprehensive development plans should include victim compensation and assistance programmes, with full participation by young people (para. 9). The Guidelines also notes that schools can usefully serve as resource and referral centres for the provision of medical, counselling and other services to young persons, "particularly those with special needs and suffering from abuse, neglect, victimization and exploitation" (para. 26). Communities should provide, or strengthen where they exist, "a wide range of community-based support measures for young persons, including community development centres, recreational facilities and services to respond to the special problems of children who are at social risk... Special facilities should be set up to provide adequate shelter for young persons who are no longer able to live at home or who do not have homes to live in... Government agencies should take special responsibility and provide necessary services for homeless or street children; information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons." (Paras. 33, 34 and 38)

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (see page 742) includes a section on "Return to the community": "All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end." (Rule 79)

"Competent authorities should provide or ensure services to assist juveniles in reestablishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community." (Rule 80)

Child victims of torture, inhuman or degrading treatment or punishment

Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states: "1. Each State Party shall

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ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

"2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law."

The United Nations General Assembly in 1985 adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. It calls on States to provide remedies, including restitution and/or compensation, and necessary material, medical, psychological and social assistance to victims of official abuse, and to provide them with justice – to the extent to which such abuse is a violation of national law (General Assembly resolution 40/34, 29 November 1985, Annex).

The Committee on the Rights of the Child has raised the issue of rehabilitation and compensation for child victims of torture with various States, including, for example, Colombia:

"The Committee recommends that the State Party ensures that all child victims of torture, cruel and degrading treatment are provided access to physical and psychological recovery and social reintegration as well as compensation, giving due consideration to the obligations enshrined in articles 38 and 39 of the Convention." (Colombia CRC/C/COL/CO/3, para. 51)

Child victims of armed conflict

Following its Day of General Discussion on "Children in armed conflict", the Committee noted:

"Consideration was particularly given to article 39 of the Convention: different experiences and programmes were brought to the attention of the Committee, underlying the need for resources and goods (namely, food and medicine). Moreover, emphasis was put on the need to consider a coherent plan for recovery and reintegration, to be planned and implemented in a combined effort by United Nations bodies and non-governmental organizations. Attention should be paid to (a) the implementation and monitoring of adequate strategies and (b) the need to reinforce the involvement of the family and the local community in this process." (Committee on the Rights of the Child, Report on the second session, September/October 1992, CRC/C/10, para. 74)

Protective provisions in the Geneva Conventions and the two Additional Protocols are relevant to the implementation of article 39 for child victims of armed conflict (see article 38, page 575).

The Optional Protocol to the Convention on the involvement of children in armed conflict requires States Parties to ensure that children recruited or used in hostilities contrary to provisions in the Protocol are demobilized or otherwise released from service; when necessary, States must accord them "appropriate assistance for their physical and psychological recovery, and their social reintegration" (article 6(3), see page 693).

The Committee makes recommendations to States which have experienced or are experiencing armed conflict, often proposing the development of comprehensive programmes of action, which must include help for mental traumas and social and educational reintegration as well as securing just reparations and social reconciliation. For example:

"In the light of articles 38 and 39 of the Convention, the Committee recommends that the State Party ensure respect for human rights and humanitarian law aimed at the protection, care and physical and psychosocial rehabilitation of children affected by armed conflict, notably regarding any participation in hostilities by children. The Committee calls upon the State Party to ensure impartial and thorough investigations in cases of rights violations committed against children and the prompt prosecution of those responsible, and that it provide just and adequate reparation to the victims." (India CRC/C/15/Add.228, para. 69)

"The Committee urges the State Party to... take every feasible measure to have all child abductees and combatants released and demobilized and to rehabilitate and reintegrate them in society taking into account particularly the specific needs of girls and other vulnerable groups... [and] ... take all necessary measures in cooperation with national and international NGOs and United Nations bodies, such as UNICEF, to address the physical needs of children victims of the armed conflict, in particular the psychological needs of all children affected directly or indirectly by the traumatic experiences of the war. In this regard, the Committee recommends that the State Party develop as quickly as possible a long-term and comprehensive programme of assistance, rehabilitation, reintegration and reconciliation..." (Liberia CRC/C/15/Add.236, para. 59)

In order for measures to be effective, States are advised to undertake initial studies, train professionals and to involve the children themselves in their recovery:

"The Committee recommends that the State Party:

(a) Undertake a comprehensive study on children affected by armed conflict in order to assess the extent, scope and population affected and identify its consequences and needed recovery and remedy;
(b) Strengthen awareness-raising campaigns with the involvement of children;
(c) Evaluate the work of existing structures and provide training to the professionals involved in the programmes.
(d) Extend the psychological and social assistance for children who have been affected by armed conflict,
(e) Take effective measures to ensure that the affected children receive adequate compensation." *(Croatia CRC/C/15/Add.243, para. 65)*

The Committee also pointed out to Sri Lanka that children affected by the conflict needed sensitive reintegration into the education system:

"Almost 20 years of civil conflict has had an extremely negative impact on the implementation of the Convention in the State Party. While recognizing that children will greatly benefit from the peace process, the Committee is concerned that during the transition to peace and the reconstruction process, children who have been affected by the conflict remain a particularly vulnerable group.
"The Committee recommends that the State Party … take effective measures to ensure that children affected by conflict can be reintegrated into the education system, including through the provision of non-formal education programmes and by prioritizing the rehabilitation of school buildings and facilities and the provision of water, sanitation and electricity in conflict-affected areas…"
(Sri Lanka CRC/C/15/Add.207, paras. 44 and 45)

In its General Comment No. 6 on "Treatment of unaccompanied and separated children outside their country of origin", the Committee emphasizes the great need of some children for rehabilitative care:

"In ensuring their access, States must assess and address the particular plight and vulnerabilities of such children. They should, in particular, take into account the fact that unaccompanied children have undergone separation from family members and have also, to varying degrees, experienced loss, trauma, disruption and violence. Many such children, in particular those who are refugees, have further experienced pervasive violence and the stress associated with a country afflicted by war. This may have created deep-rooted feelings of helplessness and undermined a child's trust in others. Moreover, girls are particularly susceptible to marginalization, poverty and suffering during armed conflict, and many may have experienced gender-based violence in the context of armed conflict. The profound trauma experienced by many affected children calls for special sensitivity and attention in their care and rehabilitation."
(Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, para. 47)

In particular, it notes the need for receiving States to make particular efforts to rehabilitate former child soldiers:

"Child soldiers should be considered primarily as victims of armed conflict. Former child soldiers, who often find themselves unaccompanied or separated at the cessation of the conflict or following defection, shall be given all the necessary support services to enable reintegration into normal life, including necessary psychosocial counselling. Such children shall be identified and demobilized on a priority basis during any identification and separation operation. Child soldiers, in particular, those who are unaccompanied or separated, should not normally be interned, but rather, benefit from special protection and assistance measures, in particular as regards their demobilization and rehabilitation. Particular efforts must be made to provide support and facilitate the reintegration of girls who have been associated with the military, either as combatants or in any other capacity."
(Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, para. 56)

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

article 39

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 39, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 39 is relevant to **departments of social welfare, health, employment, justice, defence, foreign affairs**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 39 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 39 likely to include the training of **all those responsible for child protection, teachers, social workers and health workers**)?

• Specific issues in implementing article 39

Does the State ensure that appropriate rehabilitative measures, consistent with article 39, are taken to promote physical and psychological recovery and social reintegration of all children within its jurisdiction who are victims of

- ☐ any form of neglect?
- ☐ violence or abuse?
- ☐ sexual abuse?
- ☐ sexual exploitation?
- ☐ drug abuse?
- ☐ economic exploitation?

- ☐ Does the State ensure appropriate recovery and social reintegration for children involved in the juvenile justice system?
- ☐ Has the State taken appropriate measures to ensure that compensation is available for child victims?

How to use the checklist, *see page XIX*

- ☐ Has the State reviewed the environment in which such recovery and reintegration takes place in each case to ensure that it fosters the health, self-respect and dignity of the child?
- ☐ Has the State ensured that there is respect for the views of the child victims in planning and implementing programmes for recovery and reintegration, including in individual cases?

Has the State ratified:

- ☐ the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography?
- ☐ the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime?

Reminder: **The Convention is indivisible and its articles interdependent. Article 39 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 39 include:

Article 19: protection from all forms of violence
Article 22: refugee children
Article 32: child labour
Article 33: drug abuse
Article 34: sexual exploitation
Article 35: sale, trafficking and abduction
Article 36: other forms of exploitation
Article 37: torture or any other cruel, inhuman or degrading treatment or punishment
Article 38: armed conflict
Article 40: juvenile justice
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

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Administration of juvenile justice

Text of Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well being and proportionate both to their circumstances and the offence.

Summary

Article 40 covers the rights of all children alleged as, accused of or recognized as having infringed the penal law. Thus it covers treatment from the moment an allegation is made, through investigation, arrest, charge, any pre-trial period, trial and sentence. The article requires States to promote a distinctive system of juvenile justice for children (i.e., in the light of article 1, up to 18) with the specific positive, rather than punitive, aims set out in paragraph 1.

Article 40 details a list of minimum guarantees for the child and it requires States Parties to set a minimum age of criminal responsibility, to provide measures for dealing with children who may have infringed the penal law without resorting to judicial proceedings and to provide a variety of alternative dispositions to institutional care. In addition to the protection of article 40, article 37 (page 547) bars the death penalty and life imprisonment without possibility of release and insists that any restriction of liberty must be used as a last resort and for the shortest appropriate period of time. Article 39 requires measures to promote physical and psychological recovery and reintegration of child victims (page 589). The Committee on the Rights of the Child has commended the United Nations rules and guidelines on juvenile justice as providing relevant standards for the implementation of the Convention on the Rights of the Child. In 2007 it adopted General Comment No. 10 on "Children's rights in Juvenile Justice". ■

United Nations rules and guidelines on juvenile justice

The Committee, in its examination of States Parties' reports and in its General Comment No. 10 on "Children's rights in Juvenile Justice", has stated consistently that it regards the United Nations rules and guidelines relating to juvenile justice as providing relevant detailed standards for the implementation of article 40 and the administration of juvenile justice (the United Nations Standard Minimum Rules for the Administration of Juvenile Justice – the "Beijing Rules"; the United Nations Rules for the Protection of Juveniles Deprived of their Liberty; and the United Nations Guidelines for the Prevention of Juvenile Delinquency – the Riyadh Guidelines). For full text, see Appendix 4, pages 732 *et seq*.

The Committee has also referred to the Guidelines for Action on Children in the Criminal Justice System, prepared at an expert group meeting in Vienna (Austria), in February 1997 (Economic and Social Council resolution 1997/30, Annex) and to the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, Annex). The latter may be relevant to the treatment of child victims of or witnesses of crime within justice systems. The Guidelines suggests that they could also be applied "to processes in informal and customary systems of justice such as restorative justice and in non-criminal fields of law including, but not limited to, custody, divorce, adoption, child protection, mental health, citizenship, immigration and refugee law" (para. 6)

It should be noted that the "Beijing Rules" defines "juvenile" as a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult. The provisions on juvenile justice in the Convention on the Rights of the Child apply to "children", defined for the purposes of the Convention as everyone below the age of 18, unless under national law majority is attained earlier. The Committee has indicated that States Parties should not reduce the protection available to under-18-year-olds simply because majority is reached earlier (see also Human Rights Committee, General Comment No. 17, 1989, HRI/GEN/1/Rev.8, pp. 183 *et seq*.). Thus the Committee on the Rights of the Child believes that the standards in the rules and guidelines should be applied to all aged under 18. This is highlighted in the Committee's General Comment No. 10 on "Children's rights in Juvenile Justice" (CRC/C/GC/10).

The "Beijing Rules" proposes that they should be applied beyond the criminal justice system for juveniles. Its rule 3 states:

"(1) The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.

(2) Efforts should be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.

(3) Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders."

The official commentary on the "Beijing Rules" indicates that rule 3(1) applies to "the so-called 'status offences' prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for adults (for example, truancy, school and family disobedience, buying tobacco or alcohol, etc.)" (see below, page 611).

Establishing a child-oriented juvenile justice system

In its General Comment No. 10 on "Children's rights in Juvenile Justice", the Committee states that the Convention requires States to develop and implement a comprehensive juvenile justice policy:

"This comprehensive approach should not be limited to the implementation of the specific provisions contained in articles 37 and 40, but should also take into account the general principles enshrined in articles 2, 3, 6, and 12 and all other relevant articles of the CRC, such as articles 4 and 39." *(Committee on the Rights of the Child, General Comment No. 10, 2007, CRC/C/GC/10, para. 3)*

The General Comment details the implications of the principles and of other relevant articles (see summary, page 604 and for full text see www.ohchr.org/english/bodies/crc/comments.htm).

The United Nations Secretary-General's Study on Violence Against Children, which reported to the General Assembly in October 2006, recommends: "States should establish comprehensive, child-centred, restorative juvenile justice systems that reflect international standards." (Report of the independent expert for the United Nations study on violence against children, United Nations, General Assembly, sixty-first session, August 2006, A/61/299, para. 112(b)).

Children's rights in Juvenile Justice

Committee on the Rights of the Child, General Comment No. 10, 2007: summary

The Committee acknowledges States' efforts to establish juvenile justice systems in compliance with the Convention on the Rights of the Child (CRC), but suggests many States have a long way to go to achieve full compliance. This may be the result of a lack of the necessary comprehensive policy, requiring establishment of specialized, trained units within the police, the judiciary, court system and prosecutor's office, and specialized representatives to provide legal and other assistance to the child.

The aim of the General Comment is to provide States with elaborated guidance and recommendations, promoting diversion and restorative justice and enabling States Parties to respond to children in conflict with the law in a manner which serves the best interests not only of the children but of the whole society; also to promote the integration into national policies of other international standards, in particular the relevant United Nations rules and guidelines.

Leading principles: The leading principles for a comprehensive policy for juvenile justice are found in the articles identified by the Committee as general principles (articles 2, 3, 6 and 12) together with articles 37 and 40.
States Parties must take all necessary measures to ensure that all children in conflict with the law are treated equally, without discrimination (article 2). Particular care must be taken over treatment of vulnerable groups of children, including street children, children belonging to racial, ethnic, religious or linguistic minorities, children who are indigenous, girls, children with disabilities and recidivist children repeatedly in conflict with the law. Rules, regulations and protocols should enhance equal treatment and provide for redress, remedies and compensation.

Further discriminatory victimization can affect former child offenders, trying to get education or work. There should be appropriate support with reintegration and public campaigns emphasizing their right to assume a constructive role in society.

Children should not be criminalized for behavioural problems, such as vagrancy, truancy, running away and other acts, which are often the result of psychological or socio-economic problems. These amount to status offences, not considered offences if committed by adults, and should be abolished. Such behaviour should be dealt with through child protective measures, including support for parents/caregivers and measures addressing root causes.

The best interests of the child must be a primary consideration throughout the process (article 3(1)). For under-18-year-olds, concepts of retribution and repression must give way to rehabilitation and restorative justice objectives; this can be done with attention to effective public safety.

The right to life, survival and maximum development (article 6) should inspire prevention and result in policies which support child development. The death penalty and life sentences without parole are explicitly prohibited in article 37(a) and the Committee strongly recommends the abolition of all forms of life imprisonment for offences committed under the age of 18. Deprivation of liberty, including arrest, detention and imprisonment – which has very negative consequences for a child's harmonious development and seriously hampers reintegration – must be used only as a measure of last resort and for the shortest appropriate time; this applies equally to deprivation of liberty in all systems and settings.

The right of children to express their views and have them given due weight, including the right to be heard in all judicial and administrative proceedings affecting them, must be respected and implemented throughout every stage of the process (article 12).

The inherent right to dignity (reflected in the Preamble and article 40(1)) has to be respected and protected throughout the entire process. Treatment must reinforce the child's respect for the human rights and freedoms of others and take account of the child's age and promote the child's reintegration, assuming a constructive role in society. All forms of violence against children in conflict with the law must be prohibited and prevented.

Prevention: The Committee supports the Riyadh Guidelines; prevention policies should facilitate the successful socialization and integration of all children, in particular in the family, the community, peer groups, schools, vocational training and work. The Committee underlines States' obligation to support parents and families and develop community-based services and programmes.

Interventions without judicial proceedings: States are required under article 40(3) to promote measures which do not involve judicial proceedings, ensuring that human rights and legal safeguards are fully respected (the General Comment lists requirements, including that the child has access to legal advice, is not put under any pressure to acknowledge responsibility for the offence and freely consents to the diversion). The Committee argues that diversion should be applied to, but not be limited to, all minor and first time offenders. Diversion avoids stigmatization and has good outcomes for children and public safety, as well as being cost-effective. Forms of diversion include community-based programmes such as community service, supervision and guidance by social workers or probation officers, family conferences and other forms of restorative justice including restitution to/compensation of victims.

Interventions involving judicial proceedings: Where the matter goes to court, the principles of a fair trial must be applied (see below). There should be a range of social and educational measures available and in particular the use of restriction of liberty must be used only as a last resort and for the shortest appropriate time. Public prosecutors or other responsible officials should continuously explore the possibility of alternatives to a court conviction (but always ensuring that human rights are respected and with legal safeguards, as noted above). The law must provide the court/judge with a wide variety of alternatives to institutional care and deprivation of liberty. The need to safeguard the well-being and best interests of the child and promote his or her re-integration must outweigh other considerations.

Age limits: The Committee interprets article 40(3) as requiring States Parties to set a minimum age of criminal responsibility (MACR) below which children cannot be held responsible in a penal law procedure. The Committee considers that a minimum age below 12 is not internationally acceptable. States are urged to increase their MACR to a higher age than 12 and not to lower the age. There should be no exceptions to the MACR (for example in cases of serious offences). The applicability of the juvenile justice system must extend to 18. The Committee highlights, as in other General Comments, the importance of universal birth registration.

Right to a fair trial: Article 40(2) lists guarantees aiming to ensure a fair trial. The Committee emphasizes that these are minimum standards and the General Comment provides detailed guidance on each point. With reference to article 40(2)(b)(vii), the Committee emphasizes the obligation to protect the child's privacy throughout the whole juvenile justice process, ensuring no information is published that could lead to the identification of the child. Children's records must be kept strictly confidential and must not be used in subsequent adult proceedings.

Deprivation of liberty: The Committee reiterates the obligation only to use deprivation of liberty in conformity with the law, as a measure of last resort and for the shortest appropriate period of time. It emphasizes the need to reduce use of pre-trial detention and recommends that any such detention should be reviewed, preferably every two weeks. Children in pre-trial detention should be brought to trial in not more than 30 days. The Committee comments on the obligation to separate children deprived of liberty from adults, unless it is considered in the child's best interests not to do so; best interests should be interpreted narrowly in this context. The General Comment reviews in detail the required standards to apply to all children who are deprived of their liberty, drawing on the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

Awareness-raising: States should conduct or support, with the involvement of children, educational and other campaigns to highlight the obligation to develop a rights-based approach to children in conflict with the law, seeking active and positive involvement of parliamentarians, NGOs and the media. The Committee is concerned at discriminatory and negative stereotyping of children in conflict with the law and misrepresentation or misunderstanding of the causes of juvenile delinquency.

Data collection and research: States are urged to collect systematically disaggregated data on all aspects of the administration of juvenile justice and also to regularly evaluate their practice and its effects, invariably involving children, with due respect for their privacy and other safeguards.

(Committee on the Rights of the Child, General Comment No. 10, "Children's rights in Juvenile Justice", 2007, CRC/C/GC/10. This is an unofficial summary of the General Comment. For full text see www.ohchr.org/english/bodies/crc/comments.htm.)

The *World Report on Violence against Children*, complementing the Study report, emphasizes: "Governments should ensure that juvenile justice systems for all children up to age 18 are comprehensive, child-focused and have rehabilitation and social reintegration as their paramount aims. Such systems should adhere to international standards, ensuring children's right to due process, legal counsel, access to family and the resolution of cases as quickly as possible." (Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006, p. 219)

The "Beijing Rules" notes in "Fundamental perspectives" that "Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society." (Rule 1(4))

In the case of many States Parties, the Committee has expressed concern that the system of justice for juveniles is not compatible with the principles and provisions of the Convention, in particular articles 37, 39 and 40, and of other international instruments, citing in particular the United Nations rules and guidelines. It has paid special attention to the need to develop a distinct system for juvenile justice; to the age of criminal responsibility, which in many cases it believes is set too low (see page 617); and to the importance of training focused on children's rights (see page 610).

The Committee continues to advocate comprehensive reform of the juvenile justice system to most States whose reports it examines, and encourages them to seek technical assistance. For example:

"The Committee recommends that the State Party:
(a) Take all appropriate measures to implement a juvenile justice system that is in conformity with the Convention, in particular articles 37, 40 and 39, and other United Nations standards in this field, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules'), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty;
(b) Use deprivation of liberty only as a measure of last resort and for the shortest possible period of time; protect the rights of children deprived of their liberty, including their right to privacy; and ensure that children deprived of their liberty remain in contact with their families;
(c) Take all appropriate measures to improve the situation of children in juvenile detention facilities, including their access to adequate food, clothing, heating, educational opportunities and leisure activities;
(d) Introduce training programmes on relevant international standards for all professionals involved with the administration of juvenile justice;
(e) Consider seeking technical assistance from, among others, OHCHR, the Centre for International Crime Prevention, the International Network on Juvenile Justice and UNICEF, through the Coordination Panel on Technical Advice and Assistance in Juvenile Justice." *(Georgia CRC/C/15/Add.124, para. 69)*

It pursued these issues when it examined Georgia's Second Report:

"The Committee reiterates its previous recommendations that the State Party:
(a) Ensure the full implementation of juvenile justice standards and in particular articles 37, 40 and 39 of the Convention, as well the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules') and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), in the light of the Day of General Discussion on the administration of juvenile justice, held by the Committee in 1995;
(b) Use detention, including pre-trial detention, only as a measure of last resort, for as short a time as possible, and develop alternative measures, such as community service and half-way homes to deal with juvenile delinquents in a more effective and appropriate manner;
(c) In light of article 39, take appropriate measures to promote the recovery and social reintegration of the children involved in the

juvenile justice system, including adequate education and certification to facilitate their reintegration;
(d) Strengthen preventive measures, such as supporting the role of families and communities in order to prevent juvenile delinquency;
(e) Request technical assistance in the area of juvenile justice from, among others, the Office of the United Nations High Commissioner for Human Rights and UNICEF." *(Georgia CRC/C/15/Add.222, para. 69)*

Similarly, following examination of Benin's Second Report and Ethiopia's Third Report, the Committee recommended:

"… that the State Party continue to strengthen its efforts to bring the administration of juvenile justice fully into line with the Convention, in particular articles 37, 40 and 39, and with other United Nations standards in the field of juvenile justice… In this regard, the Committee recommends in particular that the State Party:
(a) Strictly enforce existing legislation and legal procedures with more intense and systematic training for judges, counsels for persons under 18, penitentiary staff and social workers on children's rights and special needs;
(b) Urgently establish an age for criminal responsibility at an internationally acceptable level;
(c) Ensure that children deprived of their liberty remain in regular contact with their families while in the juvenile justice system, when appropriate;
(d) Implement alternative measures to deprivation of liberty, such as probation, community service or suspended sentences, in order to ensure that persons below 18 are deprived of liberty only as a last resort and for the shortest appropriate period of time;
(e) Consider establishing family courts with specialized juvenile judges; and
(f) Facilitate the reintegration of children in their families and communities and follow-up by social services." *(Benin CRC/C/BEN/CO/2, para. 76)*

"The Committee recognizes the efforts undertaken, for example through the Juvenile Justice Project Office, however notes that its impact has been hampered by limited resources. Furthermore the Committee regrets the absence of a child-friendly juvenile justice system in most of the country and the lack of legal aid representatives for child victims of offences as well as accused children. The Committee is concerned that deprivation of liberty is not used as a measure of last resort and at the lack of separation of children from adults in pre-trial detention, as well as the practice of long-term detention and institutionalization. Furthermore the Committee is concerned at the very low minimum age of criminal responsibility (set at age 9).

"The Committee urges the State Party to ensure that juvenile justice standards are fully implemented, in particular articles 37(b), 40 and 39 of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules') and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules), and in the light of the Committee's Day of General Discussion on the administration of juvenile justice held on 13 November 1995 (CRC/C/46, paras. 203-238).

In particular, the Committee recommends that the State Party:

"… (a) Raise the minimum age for criminal responsibility to an internationally acceptable level;
(b) Continue to increase the availability and quality of specialized juvenile courts and judges, police officers and prosecutors through systematic training of professionals;
(c) Provide adequate financial, human and technical resources to the juvenile courts at sub-county level;
(d) Strengthen the role of local authorities, especially with regard to minor offences;
(e) Provide children, both victims and accused, with adequate legal assistance at an early stage of legal proceedings;
(f) Be guided in this respect by the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (resolution 2005/20 of the Economic and Social Council);
(g) Improve training programmes on relevant international standards for all professionals involved with the system of juvenile justice;
(h) Ensure that detention and institutionalization of child offenders is only recurred to as a last resort;
(i) Seek technical assistance and other cooperation from the United Nations Interagency Panel on Juvenile Justice."
(Ethiopia CRC/C/ETH/CO/3, paras. 77 and 78)

Non-discrimination

The Committee's General Comment No. 10 on "Children's rights in Juvenile Justice" emphasizes that States Parties must "take all appropriate measures to ensure that all children in conflict with the law are treated equally". It goes on to emphasize the need for special attention to vulnerable groups. Rules, regulations and protocols should be established to enhance equal treatment of child offenders and provide redress, remedies and compensation (CRC/C/GC/10, para. 4).

The "Beijing Rules" includes a non-discrimination principle: "The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status." (Rule 2(1))

Special measures may be needed to prevent discrimination against children with disabilities in conflict with the law. The Committee's General Comment No. 9 on "The rights of children with disabilities" states:

"In the light of article 2 States Parties have the obligation to ensure that children with disabilities who are in conflict with the law (as described in article 40, paragraph 1) will be protected by all the provisions and guarantees contained in the Convention, not only by those specifically relating to juvenile justice (articles 40, 37 and 39) but by all other relevant provisions, for example in the area of health care and education. In addition, States Parties should take where necessary specific measures to ensure that children with disabilities de facto are protected by and do benefit from the rights mentioned above.

"With reference to the rights enshrined in article 23 and given the high level of vulnerability of children with disabilities, the Committee recommends – in addition to the general recommendation made in the previous paragraph – that the following elements of the treatment of children with disabilities (allegedly) in conflict with the law are taken into account:

(a) Ensure that a child with disability who comes in conflict with the law is interviewed using appropriate languages and otherwise dealt with by professionals such as police officers, attorneys/advocates/social workers, prosecutors and/or judges, who have received proper training in this regard.

(b) Develop and implement alternative measures with a variety and flexibility that allow for an adjustment of the measure to the individual capacities and abilities of the child in order to avoid the use of judicial proceedings Children with disabilities in conflict with the law should be dealt with as much as possible without resorting to formal/legal procedures. Such procedures should only be considered when necessary in the interest of public order. In those cases special efforts have to be made to inform the child about the juvenile justice procedure and his or her rights therein.

(c) Children with disabilities in conflict with the law should not be placed in a regular juvenile detention centre by way of pre-trial detention nor by way of a punishment. Deprivation of liberty should only be applied if necessary with a view to providing the child with adequate treatment for addressing his or her problems which have resulted in the commission of a crime and the child should be placed in an institution that has the specially trained staff and other facilities to provide this specific treatment. In making such decisions the competent authority should make sure that the human rights and legal safeguards are fully respected." (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, paras. 73 and 74)

The Convention on the Rights of Persons with Disabilities, adopted in December 2006, requires:

"1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

"2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff." (Article 13)

In its General Comment No. 10 on "Children's rights in Juvenile Justice", the Committee identifies as vulnerable groups, potentially subject to discrimination, street children, children belonging to racial, ethnic, religious or linguistic minorities, children who are indigenous, girl children, children with disabilities and children who are repeatedly in conflict with the law – recidivists (CRC/C/GC/10, para. 4). In examining States' reports, the Committee has noted, for example, discrimination or potential discrimination in juvenile justice against economically and socially disadvantaged children, against Roma children and against indigenous children, recommending:

"… that the State Party undertake to ensure that adequate protection is afforded to economically and socially disadvantaged children in conflict with the law and that alternatives to institutional care are available, as provided for under article 40, paragraphs 3 and 4, of the Convention." (Bolivia CRC/C/15/Add.1, para. 16)

"… Urgently remedy the over-representation of indigenous children in the criminal justice system; Deal with children with mental illnesses and/or intellectual deficiencies who are in conflict with the law without resorting to judicial proceedings;…" (Australia CRC/C/15/Add.268, para. 74 (c) and (d))

"... Ensure that the principle of non-discrimination is strictly applied, in particular with regards to children of vulnerable groups such as Roma;..." (Hungary CRC/C/HUN/CO/2, para. 61(d))

In recommendations adopted following its Day of General Discussion on "The rights of indigenous children", the Committee goes beyond non-discrimination in suggesting respect for traditional responses to offending – provided they are in the best interests of the child:

"To the extent compatible with articles 37, 39 and 40 of the Convention and other United Nations standards and rules, the Committee suggests that States Parties respect the methods customarily practised by indigenous peoples for dealing with criminal offences committed by children, when it is in the best interests of the child ..." (Committee on the Rights of the Child, Report on the thirty-fourth session, September/October 2003, CRC/C/133, p. 134)

Best interests

In all decisions taken within the context of the administration of juvenile justice, the best interests of the child are to be a primary consideration; in its General Comment No. 10 on "Children's rights in Juvenile Justice", the Committee emphasizes that rehabilitation and restorative justice are the objectives, not retribution or repression (CRC/C/GC/10, para. 4). Consistent with the best interests principle in article 3 of the Convention on the Rights of the Child, the "Beijing Rules" requires that Member States seek "to further the well-being of the juvenile and her or his family" (rule 1(1)); and that: "The juvenile justice system shall emphasize the well-being of the juvenile..." (Rule 5(1)) Also proceedings "shall be conducive to the best interests of the juvenile..." (Rule 14(2)) and "The well-being of the juvenile shall be the guiding factor in the consideration of her or his case." (Rule 17(1)(d))

A Committee member explained in discussions with Mongolia that in revising the penal code, "the rehabilitation of offenders should be the primary objective, not the third, following the protection of society and the punishment of the child in the interest of society, as appeared to be the case" (Mongolia CRC/C/SR.266, para. 38).

Participation

Article 12 of the Convention on the Rights of the Child requires that a child capable of expressing views must have the right to express those views freely in all matters affecting the child and that the child's views must be given due weight (paragraph 1); in particular, the child must have an opportunity to be heard in any judicial and administrative proceedings affecting him or her (paragraph 2; see page 149). The Committee confirms in its General Comment No. 10 on "Children's rights in Juvenile Justice" that these rights must be fully respected and implemented throughout every stage of the process of juvenile justice (CRC/C/GC/10, para. 4). In order to exercise these participatory rights, the child must have access to appropriate information. Thus, children should be involved in the planning and implementation of the justice system affecting children and have a right to be heard and have their views taken seriously in all aspects of the system and all procedures. Article 40 requires that the child is informed promptly and directly of the charges against him or her, has access to legal and other appropriate assistance and is entitled to play a full part in the proceedings (with the assistance of an interpreter, if needed). Equally important in relation to formal proceedings, the child has the right to remain silent (see below, pages 614 and 615). The "Beijing Rules" requires that proceedings shall be conducted "... in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely" (rule 14(2)).

The Riyadh Guidelines in particular emphasizes the importance of participation in prevention as well as planning and implementation: "For the purposes of the interpretation of these guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control" (para. 3). For example, as part of the "comprehensive prevention plans" proposed for every level of government, there should be "Youth participation in delinquency prevention policies and processes, including recourse to community resources, youth self-help, and victim compensation and assistance programmes" (para. 9(h)). In the community, "youth organizations should be created or strengthened at the local level and given full participatory status in the management of community affairs. These organizations should encourage youth to organize collective and voluntary projects, particularly projects aimed at helping young persons in need of assistance" (para. 37). In preparing plans and policies for young people "... young persons themselves should be involved in their formulation, development and implementation" (para. 50).

Effect of public opinion on juvenile justice

In its General Comment No. 10 on "Children's rights in Juvenile Justice", the Committee comments:

"Children who commit offences are often subject to negative publicity in the media,

which contributes to a discriminatory and negative stereotyping of these children and often of children in general. This negative presentation or criminalization of child offenders is often based on misrepresentation and/or misunderstanding of the causes of juvenile delinquency and results regularly in a call for a tougher approach (e.g. zero tolerance, three strikes and you are out, mandatory sentences, trial in adult court and other primarily punitive responses).
To create a positive environment for a better understanding of the root causes of juvenile delinquency and a rights-based approach to this social problem, States Parties should conduct, promote and/or support educational and other campaigns to raise awareness of the need and the obligation to deal with children alleged as violating the penal law in accordance with the spirit and the letter of the CRC. In this regard, States Parties should seek the active and positive involvement of members of parliament, NGOs and the media…" (Committee on the Rights of the Child, General Comment No. 10, 2007, CRC/C/GC/10, para. 32)

The Committee has often pointed out the social roots of juvenile crime and violence in its comments and discussions with States Parties. For example, a Committee member noted during discussion of Jamaica's juvenile justice system that "... young offenders should be seen as both perpetrators and victims; the criminality of children was a measure of violence in the broader society..." (Jamaica CRC/C/SR.197, para. 89)

The "Beijing Rules" requires that in all cases involving criminal offences, except minor offences, "before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority" (rule 16).

Training for juvenile justice

The Committee has consistently recommended, and confirms in its 2007 General Comment on "Children's rights in Juvenile Justice" that all those involved with children in the juvenile justice system, both in its planning and administration and in its institutions and programmes, should receive adequate training with a particular focus on the principles and provisions of the Convention and the relevant United Nations rules and guidelines.

The *World Report on Violence against Children* recommends: "Governments should ensure that staff recruitment, training and employment policies and rights-based codes of conduct ensure that all those who work with children in care and justice systems are both qualified and fit to work with children and young people, that their professional status is recognized, and that their wages are adequate… Governments should ensure that all those who come into contact with children during the process of their assimilation into care and justice systems should be familiarized with children's rights; this applies equally to the children concerned and to their parents." (Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006, pp. 216 and 217)

Prevention of offending

The Convention on the Rights of the Child does not specifically address prevention of offending, but as indicated above, the Committee on the Rights of the Child has emphasized the social roots of offending, and it has also consistently proposed that the Riyadh Guidelines for the Prevention of Juvenile Delinquency should be regarded as providing relevant standards for implementation. The Guidelines requires "comprehensive prevention plans" to be instituted at every level of government and proposes that they should be implemented within the framework of the Convention and other international instruments. In its General Comment No. 10 on "Children's rights in Juvenile Justice", the Committee states:

"… a juvenile justice policy without a set of measures aimed at preventing juvenile delinquency suffers from serious shortcomings…. The Committee fully supports The Riyadh Guidelines and agrees that emphasis should be placed on prevention policies facilitating the successful socialization and integration of all children, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. This means inter alia *that prevention programmes should focus on support for particularly vulnerable families, involvement of schools in teaching basic values (including information about the rights and responsibilities of children and parents under the law), and extending special care and attention to young persons at risk. In this regard, particular attention should also be given to children who drop out from school or otherwise do not complete their education. The use of peer group support and a strong involvement of parents are recommended. States Parties should also develop community-based services and programmes, which respond to the special needs, problems, concerns and interests of children, in particular of children repeatedly in conflict with the law,*

and which provide appropriate counselling and guidance to their families.
"Articles 18 and 27 confirm the importance of the responsibility of parents for the upbringing of their children, but at the same time the CRC requires States Parties to provide the necessary assistance to parents (or other caretakers) in the performance of their parental responsibilities.
"The measures of assistance should not only focus on the prevention of negative situations, but also and rather more on the promotion of the social potential of parents... States Parties should fully promote and support the involvement of children, in accordance with article 12 and of parents, community leaders and other key actors (e.g. representatives of NGOs, probation services and social work), in the development and implementation of prevention programmes. The quality of this involvement is a key factor in the success of these programmes." (*Committee on the Rights of the Child, General Comment No. 10, 2007, CRC/C/GC/10, paras. 5* et seq.)

"... the right of every child ... to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society": article 40(1)

Paragraph 1 of article 40 of the Convention upholds the positive, rehabilitative aims of the juvenile justice system, which have been underlined by the Committee in the wider context of the best interests of the child (see above, page 609). The paragraph links to the following provisions in paragraphs 3 and 4 of article 40, which stress the importance of excluding younger children from criminal responsibility, avoiding judicial proceedings and developing a variety of dispositions including in particular alternatives to institutional care (see below, page 619). It also echoes the aims of education set out in article 29 (see page 437), which include development of respect for human rights, and preparation of the child for responsible life in a free society.

In relation to criminal justice systems, the International Covenant on Civil and Political Rights requires: "In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation." (Article 14(4))

"To this end, and having regard to relevant provisions of international instruments, States Parties shall, in particular, ensure that: "(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed": article 40(2)(a)

These words reflect the principle that offences must have been defined in the criminal law at the time they were committed. See, for example, the Universal Declaration of Human Rights, article 11(2), and the International Covenant on Civil and Political Rights, article 15. In addition, the Covenant states "... Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby."

"Status" offences. In its General Comment No. 10 on "Children's rights in Juvenile Justice", the Committee states that criminal codes quite often include provisions criminalizing behavioural problems of children, such as vagrancy, truancy, running away and other acts, which are often the result of psychological or socio-economic problems. Such acts (also known as status offences) are not considered to be an offence if committed by adults. The Committee recommends that States should abolish status offences in order to establish equal treatment under the law for children and adults; such behaviour should be dealt with through the implementation of child protective measures, including effective support for parents and/or other caregivers and measures which address root causes (CRC/C/GC/10, para. 4).

The Committee refers to article 56 of the Riyadh Guidelines: "In order to prevent further stigmatisation, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person."

In examining States' reports, the Committee frequently expresses concern at criminalization of children for "status" offences or behaviour problems. For example, commenting on Egypt's Second Report, the Committee noted its concern

"... that status offences, such as begging and truancy, under article 96 of the Children's Code are in practice criminalized...
"The Committee recommends that the State Party repeal status offences such as begging and truancy..." *(Egypt CRC/C/15/Add.145, paras. 53 and 54)*

Similarly, it expressed concern that in Nigeria

"... some children are detained for 'status offences' such as vagrancy, truancy or wandering, or at the request of parents for 'stubbornness or for being beyond parental control'..." *(Nigeria CRC/C/15/Add.257, para. 78(h))*

and in Bahrain:

"... under article 2 of the 1976 Juvenile Law, persons who commit status offences (e.g. begging, dropping out, misbehaviour, etc.) are subject to legal sanctions;..."

it recommended that the State should

"... end the criminalization of status offences (e.g. dropping out of school, and misbehaviour);..." *(Bahrain CRC/C/15/Add.175, para. 48)*

It has emphasized with increasing frequency that behavioural problems should not be criminalized, for example, following examination of reports from Kazakhstan, Japan, Ireland and Denmark:

"The Committee is concerned at the general lack of comprehensive information on the Criminal Code and the Criminal Procedure Code. The Committee notes, inter alia, *that disorderly conduct has been defined as a serious crime constituting a danger to society, leading to the criminalization of behavioural problems.*
"The Committee recommends that the State Party review its classification of serious crimes in order to reduce criminal law prosecution of 14- to 16-year-old children and abolish provisions that criminalize the behavioural problems of children (so-called status offences)." *(Kazakhstan CRC/C/15/Add.213, paras. 68 and 69)*

"... the Committee is concerned at reports that children exhibiting problematic behaviour, such as frequenting places of dubious reputation, tend to be treated as juvenile offenders.
"The Committee recommends that the State Party:... Ensure that children with problematic behaviour are not treated as criminals;..." *(Japan CRC/C/15/Add.231, paras. 53 and 54(f))*

"The Committee is also concerned that the Anti-Social Behaviour Orders provided for in the Criminal Justice Act 2006 will have the effect of bringing 'at risk' children closer to the criminal justice system, especially as a breach of an Order is considered a crime. Furthermore, the Committee is concerned that the wide discretion of the judges as to the type and content of an Order may lead to measures that are disproportionate to the impugned behaviour.
"The Anti-Social Behaviour Orders be closely monitored and only used as a last resort after preventive measures (including a diversion scheme and family conferences) have been exhausted." *(Ireland CRC/C/IRL/CO/2, paras. 68 and 69(b))*

"... Take measures to abolish the practice of imprisoning or confining in institutions persons under 18 who display difficult behaviour;..." *(Denmark CRC/C/DNK/CO/3, para. 59(b))*

Although the Committee recommends that States take action to protect children from being drawn into gangs, it has expressed particular concern at repressive measures taken in response to juvenile gangs, for example following examination of El Salvador's Second Report:

"The Committee is deeply concerned that measures taken under the so-called 'Tough Hand Plan' (Plan Mano Dura), *adopted in July 2003, and the Anti-Gang Laws, in force since October 2003, including the second Anti-Gang Law (Ley para el combate de las actividades delincuenciales de grupos o asociaciones ilícitas especiales) of 1 April 2004, are in breach of the Convention. The Committee expresses concern at,* inter alia, *the notion of a 'capable minor'* (menor habilitado), *which provides for the possibility of prosecuting a child as young as aged 12 as an adult; and the fact that the law criminalizes physical features, such as the use of signs or symbols as a means of identification and the wearing of tattoos or scars. Moreover, the Committee is concerned that the Anti-Gang Laws undermine the Juvenile Offenders Act by introducing a dual system of juvenile justice. The Committee also expresses concern at the large number of children who have been detained as a consequence of the 'Tough Hand Plan' and the Anti-Gang Laws, and regrets the lack of social and educational policies to address the problems of gang involvement and violence and crime among adolescents.*
"The Committee urges the State Party to immediately abrogate the second Anti-Gang Law and to apply the Juvenile Offenders Act as the only legal instrument in the area of juvenile justice. The Committee reaffirms the State Party's obligation to ensure that measures taken to prevent and combat crime are fully in conformity with international human rights standards and based on the principle of the best interests

of the child. It recommends that the State Party adopt comprehensive strategies which are not limited to penal measures but also address the root causes of violence and crime among adolescents, in gangs and outside gangs, including policies for social inclusion of marginalized adolescents; measures to improve access to education, employment and recreational and sports facilities; and reintegration programmes for juvenile offenders." *(El Salvador CRC/C/15/Add.232, paras. 67 and 68)*

"(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:..."

Paragraph 2(b) of article 40 sets out a minimum list of guarantees that must be available to children alleged as or accused of criminal acts. Some reflect principles already established for everyone including children under other international instruments, but some are applicable specifically to children. The Committee's General Comment No. 10 on "Children's rights in Juvenile Justice" provides States with further guidance on each guarantee.

The "Beijing Rules" states: "Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings" (rule 7(1)). The commentary to the Rules notes: "Rule 7(1) emphasizes some important points that represent essential elements for a fair and just trial and that are internationally recognized in existing human rights instruments... Rules 14 *et seq.* of these Standard Minimum Rules specify issues that are important for proceedings in juvenile cases in particular, while rule 7(1) affirms the most basic procedural safeguards in a general way." Rule 14 states: "14(1) Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial. 14(2) The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely."

"(i) To be presumed innocent until proven guilty according to law"

This reflects provisions in the Universal Declaration of Human Rights, article 11, and the International Covenant on Civil and Political Rights, article 14(2).

The Committee on the Rights of the Child has noted with concern legislation that enables silence to be interpreted as supporting a finding of guilt (also relating to the right not to be compelled to give testimony or to confess guilt – article 40(2)(b)(iv)):

"The Committee is also concerned that The Criminal Evidence (N.I.) Order 1988 appears to be incompatible with article 40 of the Convention, in particular with the right to presumption of innocence and the right not to be compelled to give testimony or confess guilt. It is noted that silence in response to police questioning can be used to support a finding of guilt against a child over 10 years of age in Northern Ireland. Silence at trial can be similarly used against children over 14 years of age...

"The Committee recommends that the emergency and other legislation, including in relation to the system of administration of juvenile justice, at present in operation in Northern Ireland should be reviewed to ensure its consistency with the principles and provisions of the Convention." *(United Kingdom CRC/C/15/Add.34, paras. 20 and 34)*

And it commented to Colombia:

"... the Committee is concerned that the general practice of law enforcement agents to publicly display images in media of arrested persons contravenes the principle of presumption of innocence."

It recommended that Colombia should ensure that the principles relating to the presumption of innocence and the right to a fair trial are guaranteed *(Colombia CRC/C/COL/CO/3, paras. 91 and 92).*

"(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence"

Article 9(2) of the International Covenant on Civil and Political Rights requires that anyone who is arrested shall be informed, at the time of arrest, of the reasons for it "and shall be promptly informed of any charges against him". Article 14(3)(a) requires that everyone charged with a criminal offence shall be "informed promptly and in detail in a language which he understands of the nature and cause of the charge against him." The Convention adds the requirement to inform the child "if appropriate, through his or her parents or legal guardians" – presumably this

requirement is to be decided in the light of the child's best interests.

The "Beijing Rules" expands on the right to legal assistance: "Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country." (Rule 15(1))

In addition, the International Covenant on Civil and Political Rights provides that everyone charged with a criminal offence should have "adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing" (article 14(3)(b)) and "to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it" (article 14(3)(d)).

The Committee has commented on lack of legal assistance. For example, following examination of Nigeria's Second Report, it expressed concern that under-18-year-olds are often not legally represented during trial, and recommended that the State should

"... Guarantee that all persons below 18 have the right to appropriate legal assistance and defence and ensure speedier fair trials for them;..." (Nigeria CRC/C/15/Add.257, para. 81(b))

"(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians"

In its General Comment on "Children's rights in Juvenile Justice", the Committee concludes:

"Internationally there is a consensus that for children in conflict with the law the time between the commission of the offence and the final response to this act should be as short as possible. The longer this period, the more likely it is that the response loses its desired positive, pedagogical impact, and the more the child will be stigmatized.
"In this regard, the Committee also refers to article 37(d) CRC, where the child deprived of liberty has the right to a prompt decision on his/her action to challenge the legality of the deprivation of his/her liberty. The standard 'prompt' is even stronger - and justifiably so given the seriousness of deprivation of liberty - than the standard 'without delay' (art. 40(2)(b)(iii) CRC), which is stronger than the standard 'without undue delay' of article 14(3)(c) ICCPR [International Covenant on Civil and Political Rights].
"The Committee recommends the States Parties to set and implement time limits for the period between the commission of the offence and the completion of the police investigation, the decision of the prosecutor (or other competent body) to bring charges against the child, and the final adjudication and disposition by the court or other competent judicial body. These time limits should be much shorter than the ones for adults. But at the same time, decisions without delay should be the result of a process in which the human rights of the child and legal safeguards are fully respected..." (Committee on the Rights of the Child, General Comment No. 10, 2007, CRC/C/GC/10, para. 23)

There are similar provisions in the Universal Declaration of Human Rights, article 10, and the International Covenant on Civil and Political Rights, article 14. The Covenant requires trial without "undue" delay; the Convention on the Rights of the Child removes the qualification "undue" in the case of children. Article 40 of the Convention does not refer to pre-trial detention because article 37 requires that restriction of liberty in any circumstances may only be used as a measure of last resort and for the shortest appropriate period (see article 37, page 556 for discussion and for the Committee's, and other, comments).

Article 40 adds to the child's established right to legal and other appropriate assistance, the principle that the child's parents or legal guardians should be present, "unless it is considered not to be in the best interest of the child". The article implies that parents or legal guardians can be required to be present, and can be excluded in certain cases. The "Beijing Rules" emphasizes this: "The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile." (Rule 15(2))

"(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination

of witnesses on his or her behalf under conditions of equality"

In many cultures, there is a social expectation that children should answer when asked questions by adults. It is therefore important to stress that in all stages of criminal proceedings they have a right to remain silent. The Committee's General Comment No. 10 on "Children's rights in Juvenile Justice" states that it is self-evident that torture or other cruel, inhuman or degrading treatment to achieve an admission or confession is a grave violation of the child's rights and no such admission or confession can be admissible in evidence:

"… But there are many other less violent ways to coerce or to lead the child to a confession or a self-incriminatory testimony. The term 'compelled' should be interpreted in a broad manner and not be limited to physical force or other clear violations of human rights. The age of the child, the child's development, the length of the interrogation, the child's lack of understanding, the fear of unknown consequences or of a suggested possibility of imprisonment, may lead him/her to a confession that is not true. That may become even more likely if rewards are promised such as: 'You can go home as soon as you have given us the true story', or lighter sanctions or release are promised.

"The child being questioned must have access to a legal or other appropriate representative, and must be able to request that their parent(s) be present during questioning. There must be independent scrutiny of the methods of interrogation to assure that the evidence is voluntary and not coerced, given the totality of the circumstances, and is reliable. The court or other judicial body, when considering the voluntariness and reliability of an admission or confession by a child, must take into account the age of the child, the length of custody and interrogation, and the presence of legal or other counsel, parent(s), or independent representatives for the child. Police officers and other investigating authorities should be well trained to avoid interrogation techniques and practices that result in coerced or unreliable confessions or testimonies." *(Committee on the Rights of the Child, General Comment No. 10, 2007, CRC/C/GC/10, para. 23)*

See the Universal Declaration of Human Rights, article 11, and the International Covenant on Civil and Political Rights, article 14, which require that in the determination of a criminal charge, everyone shall be entitled "not to be compelled to testify against himself or to confess guilt". (See also the Committee's comments quoted under article 40(2)(b)(i), above, page 613.)

"(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law"

Article 14(5) of the International Covenant on Civil and Political Rights requires: "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

When it ratified the Convention, Denmark made a reservation relating to article 40(2)(b)(v): "It is a fundamental principle in the Danish Administration of Justice Act that everybody shall be entitled to have any penal measures imposed on him or her by a court of first instance reviewed by a higher court. There are, however, some provisions limiting this right in certain cases, for instance verdicts returned by a jury on the question of guilt, which have not been reversed by the legally trained judges of the court." (CRC/C/2/Rev.8, p. 20) The Committee commented:

"The Committee notes with concern that the State Party made a reservation to article 40(2)(b)(v) of the Convention, but also notes that the Government may reconsider this reservation….

"The Committee wishes to encourage the State Party to consider the possibility of withdrawing its reservation to the Convention, and would like to be kept informed of developments on this matter." *(Denmark CRC/C/15/Add.33, paras. 8 and 16)*

In its General Comment No. 10, the Committee notes that this right of appeal should apply to every sentenced child and it recommends States which have made a reservation in relation to article 40(2)(b)(v) to withdraw it (CRC/C/GC/10, para. 23).

"(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used"

The International Covenant on Civil and Political Rights, article 14(3)(f), guarantees the same right. This is important not only to children who speak a different language, but also to children with disabilities (see General Comment No. 9 on "The rights of children with disabilities", quoted above, page 608).

"(vii) To have his or her privacy fully respected at all stages of the proceedings"

General Comment No. 10 on "Children's rights in Juvenile Justice" states that "at all stages of the proceedings" includes from the initial

contact with a law enforcement agency right up to and including the final decision by a competent authority, or release from supervision, custody or deprivation of liberty:

"No information shall be published that may lead to the identification of a child offender because of its effect of stigmatization and possible impact on their ability to obtain an education, work, housing, or to be safe... Furthermore, the right to privacy also means that records of child offenders shall be kept strictly confidential and closed to third parties except for those directly involved in the investigation, adjudication and disposal of the case. With a view to avoiding stigmatization and/or prejudgments, records of child offenders shall not be used in adult proceedings in subsequent cases involving the same offender, or to enhance some future sentencing..." *(Committee on the Rights of the Child, General Comment No. 10, 2007, CRC/C/GC/10, para. 23)*

Article 14(1) of the International Covenant on Civil and Political Rights provides general rules requiring public hearings, indicating limited circumstances in which the press and public may be excluded: "... any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children".

The "Beijing Rules" expands on the provision in article 40 of the Convention: "The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling. In principle, no information that may lead to the identification of a juvenile offender shall be published." (Rule 8(1) and (2))

The official commentary on the Rules explains: "Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as 'delinquent' or 'criminal'.

"Rule 8 also stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle."

The Committee has expressed concern at breaches of the right to privacy in juvenile justice and recommended full protection. For example, to the United Kingdom and Canada:

"... The privacy of children involved in the criminal justice system is not always protected and their names are, in cases of serious offences, often published;...
"Ensure that the privacy of all children in conflict with the law is fully protected in line with article 40(2)(b)(vii) of the Convention;..." *(United Kingdom CRC/C/15/Add.188, paras. 60(d) and 62(d))*

"The Committee is concerned ... that public access to juvenile records is permitted and that the identity of young offenders can be made public.
" ... the Committee urges the State Party ... To ensure that the privacy of all children in conflict with the law is fully protected in line with article 40, paragraph 2 (b) (vii) of the Convention;..." *(Canada CRC/C/15/Add.215, paras. 56 and 57(c))*

"States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law...": article 40(3)

As noted above (page 603), General Comment No. 10 on "Children's rights in Juvenile Justice" indicates that States Parties are required to develop a comprehensive juvenile justice policy. This further requires the establishment of specialized units within the police, judiciary, courts system, prosecutors' office and the provision of specialized defenders or other representatives for children (CRC/C/GC/10, paras. 30 and 31).

The "Beijing Rules" also emphasizes:

"Efforts should be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

(a) To meet the varying needs of juvenile offenders, while protecting their basic rights;

(b) To meet the needs of society;

(c) To implement the following rules thoroughly and fairly." (Rule 2(3))

The Committee frequently expresses concern at provisions which result in children being dealt with by adult courts. For example, it expressed concern that children were tried as adults in

Canada and the United Kingdom and recommended that the States should :

"... ensure that no person under 18 is tried as an adult, irrespective of the circumstances or the gravity of his/her offence;..." (Canada CRC/C/15/Add.215, para. 57(a). See also United Kingdom CRC/C/15/Add.188, para. 62(c).)

"(a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law"

In its General Comment No. 10 on "Children's rights in Juvenile Justice", the Committee indicates that it interprets this provision of article 40 as a requirement on States to set a minimum age of criminal responsibility – children who commit an offence below the specified age cannot be formally charged or held responsible in a penal law procedure. The Committee emphasizes that a minimum age below 12 is not internationally acceptable. The Committee recommends that States should regard 12 as the absolute minimum and continue to raise the age. No State should lower its minimum age to 12. The Committee recommends that there must be no exceptions once an age is set; it expressed concern about States where a lower age is applicable for children who commit serious offences. If there is no proof of age and it cannot be established that the child is at or above the minimum age, the child shall not be held criminally responsible (CRC/C/GC/10, para. 16).

The "Beijing Rules" requires in rule 4: "In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity."

The commentary to rule 4 states: "The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially anti-social behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.). Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally."

In its General Comment No. 7 on "Implementing child rights in early childhood", the Committee, in a section headed "Young children's vulnerability to risks", emphasizes:

"Under no circumstances should young children (defined as under 8 years old...) be included in legal definitions of minimum age of criminal responsibility. Young children who misbehave or violate laws require sympathetic help and understanding, with the goal of increasing their capacities for personal control, social empathy and conflict resolution. States Parties should ensure that parents/caregivers are provided adequate support and training to fulfil their responsibilities (art. 18) and that young children have access to quality early childhood education and care, and (where appropriate) specialist guidance/therapies." (Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 36(i))

The Committee has expressed particular concern when it appears no age has been fixed in law, or when the age is set too low. For example:

"The Committee is particularly concerned that the age at which children enter the criminal justice system is low with the age of criminal responsibility still set at 8 years in Scotland and at 10 years in the rest of the State Party...
"In particular, the Committee recommends that the State Party:... Considerably raise the minimum age of criminal responsibility;..." (United Kingdom CRC/C/15/Add.188, paras. 59 and 62(a))

More recently, the Committee has proposed that the age should be set at "an internationally acceptable level":

"... The Committee is deeply concerned that the minimum age of criminal responsibility is generally set at the very low level of 7 to 10 years, depending upon the state...
"... While acknowledging the fact that the federal Government is planning to harmonize the age of criminal liability and raise it in all the states to 10 years, the Committee believes that this age is still too low." (Australia CRC/C/15/Add.79, paras. 11 and 29)

When it examined Australia's combined Second and Third Reports, the Committee commented:

"Furthermore, the Committee is concerned that ... the age of criminal responsibility, set at 10 years, is too low, although there is a presumption against criminal responsibility until the age of 14 (common law doli incapax*);..."*

It recommended that Australia should:

"Consider raising the minimum age of criminal responsibility to an internationally acceptable level;..." (Australia CRC/C/15/Add.268, paras. 73 and 74)

It has expressed concern where, although a high age has been designated, children below that age are still being held criminally responsible:

"... While noting that the minimum age for criminal responsibility is set at 16, the Committee is concerned that children under 16 are nevertheless held criminally responsible via a juvenile court procedure...
"... the Committee recommends that the State Party:
... With regard to the minimum age of criminal responsibility, make sure that children under 16 years of age who have committed an offence and are dealt with via the present procedure only face protective and educative measures;..." (Liberia CRC/C/15/Add.236, paras. 66 and 68)

When it examined Chile's Initial Report, it recommended that the State should establish a legal system of administration of juvenile justice and that

"... such a legal system should also address the important question of the minimum age of criminal responsibility, particularly in the light of the best interests of the child..." (Chile CRC/C/15/Add.22, para. 17)

When it examined Chile's Second Report, the Committee was concerned

"... at the fact that the criminal law and procedure for adults can be applied also to children aged between 16 and 18 who acted with discernment and that the Committee's previous recommendation on addressing the question of the minimum age of criminal responsibility ... was not implemented.
"In line with its previous recommendation..., the Committee recommends that the State Party: ... (b) Address the question of the minimum age of criminal responsibility in light of article 40, paragraph 3(a);..." (Chile CRC/C/15/Add.173, paras. 53 and 54)

There must be no discrimination in the age, for example between girls and boys, or between different regions of the country.

The Committee has welcomed a proposal to set the age at 18:

"... The Committee welcomes the information provided by the State Party that the new draft children's decree will set the age limit for criminal responsibility at 18." (Nigeria CRC/C/15/Add.61, para. 39)

"(b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected"

The Committee's General Comment No. 10 on "Children's rights in Juvenile Justice" places particular emphasis on the importance of diversion and on States having a variety of dispositions available such as care, guidance and supervision orders, counselling, probation, foster care, educational and training programmes and other alternatives to institutional care. But it also emphasizes the need for full respect for human rights and necessary legal safeguards in any diversion process. Diversion should only be proposed where there is convincing evidence that the child has committed the alleged offence and voluntarily acknowledges responsibility without intimidation or pressure; this acknowledgement must not be used against the child in any subsequent legal proceedings. The child must freely and willingly consent in writing to the diversion. The completion of the diversion should result in a definite and final closure of the case (CRC/C/GC/10, para. 13).

The "Beijing Rules" expands on the encouragement of diversion from judicial proceedings in rule 11:

"(1) Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14(1) below.

(2) The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

(3) Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

(4) In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision, and guidance, restitution, and compensation of victims."

The official commentary on the "Beijing Rules" notes that: "Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practised on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence). In many cases, non-intervention would be the

best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.

"As stated in rule 11(2), diversion may be used at any point of decision-making – by the police, the prosecution or other agencies such as the courts, tribunals, boards or councils. It may be exercised by one authority or several or all authorities, according to the rules and policies of the respective systems and in line with the present Rules. It may not necessarily be limited to petty cases, thus rendering diversion an important instrument.

"Rule 11(3) stresses the important requirement of securing the consent of the young offender (or the parent or guardian) to the recommended diversionary measure(s). (Diversion to community service without such consent would contradict the Abolition of Forced Labour Convention). However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process.

"Rule 11(4) recommends the provision of viable alternatives to juvenile justice processing in the form of community-based diversion. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed (for example first offence, the act having been committed under peer pressure, etc.)."

The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) is also relevant to this provision of article 40 of the Convention and the following provision, as is the "Basic Principles on the use of restorative justice programmes in criminal matters" (Economic and Social Council resolution 2002/12). The Rules do not refer specifically to juveniles, but state that they should be applied without discrimination based on age. They provide minimum safeguards for persons subject to alternatives to imprisonment.

"A variety of dispositions such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence": article 40(4)

article 40

In addition to this provision, article 37 emphasizes that restriction of liberty of children must only be used as a last resort and for the shortest appropriate period, and it bars capital punishment, life imprisonment without possibility of release, and any cruel, inhuman or degrading treatment or punishment (see article 37, page 547).

Paragraph 4 of article 40 requires that alternatives to institutional care must be available, to ensure that sentencing is consistent with the aims of juvenile justice and the general principles of the Convention.

The "Beijing Rules" sets more detailed "Guiding principles in adjudication and disposition" (rule 17):

"(1) The disposition of the competent authority shall be guided by the following principles:

(a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society...

(d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case..."

(The remaining principles in rule 17 relate to restriction of liberty, capital punishment and corporal punishment; see article 37, page 547.)

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 40, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 40 is relevant to **departments of justice, home affairs, social welfare, education, health**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 40 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 40 likely to include the training of the **judiciary, lawyers, police, and all others working in the juvenile justice system, and in support of systems of diversion and prevention**)?

• Specific issues in implementing article 40

Does legislation, policy and practice in the State uphold the right of every child in the jurisdiction alleged as, accused of or recognized as having infringed the penal law to be treated in a manner which

- ☐ is consistent with the promotion of the child's sense of dignity and worth?
- ☐ reinforces the child's respect for fundamental human rights and for the fundamental freedoms of others?
- ☐ takes into account the child's age?
- ☐ takes into account the desirability of promoting the child's reintegration?
- ☐ takes into account the desirability of the child assuming a constructive role in society?

- ☐ In planning its system of juvenile justice, has the State had regard to the relevant United Nations rules and guidelines and to other relevant international instruments?

How to use the checklist, *see page XIX*

- ☐ Does legislation ensure that children cannot come into the criminal justice system because of acts or omissions that were not prohibited by national or international law at the time they were committed?

Does legislation, policy and practice in the State guarantee to any child alleged as or accused of having infringed the penal law the right

- ☐ to be presumed innocent until proved guilty according to the law?
- to be informed of the charges against him or her
  - ☐ promptly?
  - ☐ directly?
  - ☐ if appropriate through parents and guardians?
- in the preparation and presentation of his defence, to have appropriate
  - ☐ legal assistance?
  - ☐ other assistance?
- to have the matter determined
  - ☐ without delay?
  - ☐ by a competent and impartial authority or judicial body?
  - ☐ in a fair hearing (according to international instruments, including the "Beijing Rules")?
  - ☐ in the presence of legal and other appropriate assistance?
  - ☐ in the presence – unless judged not to be in the child's best interest, and taking account of the child's age or situation – of parents or legal guardians?
  - ☐ in the child's own presence?
- not to be compelled
  - ☐ to give testimony?
  - ☐ to confess guilt?
- to be able
  - ☐ to examine or have examined adverse witnesses?
  - ☐ to obtain the participation and examination of witnesses on his or her behalf under conditions of equality?
- if considered to have infringed the criminal law, to have a review by a higher, competent, independent and impartial authority or judicial body according to law,
  - ☐ of the decision?
  - ☐ of any measures imposed in consequence thereof?
- ☐ to have the free assistance of an interpreter if the child cannot understand or speak the language used?
- ☐ to have his or her privacy fully respected at all stages of the proceedings?

- ☐ Are hearings involving children open to the public?
- ☐ Are there appropriate limits on press reporting of such hearings and their results?
- ☐ Does legislation ensure that there are no circumstances in which the identity of a child alleged as, accused of or recognized as having infringed the penal law can be disclosed?

How to use the checklist, *see page XIX*

- ☐ Is there a system of juvenile justice in the State distinctive from that relating to adults?
- ☐ Are all children up to 18 years of age alleged as, accused of or recognized as having infringed the penal law in the jurisdiction, without exception, dealt with through the system of juvenile justice?

Does the juvenile justice system include, specifically for such children, distinct

- ☐ laws?
- ☐ procedures?
- ☐ authorities?
- ☐ institutions?
- ☐ disposals?

- ☐ Is a minimum age defined in law below which children are presumed not to have the capacity to infringe the criminal law?
- ☐ If such an age is defined, are there no circumstances in which a child below that age can be alleged as, accused of or recognized as having infringed the criminal law?
- ☐ Does legislation, policy and practice provide measures for dealing with children alleged as, accused of or recognized as having infringed the penal law without resorting to judicial proceedings?
  - ☐ If so, do safeguards exist for the child who believes him/herself to be innocent?

Are a variety of dispositions available, such as

- ☐ care orders?
- ☐ guidance and supervision orders?
- ☐ diversion to mental health treatment?
- ☐ victim reparation/restitution?
- ☐ counselling?
- ☐ probation?
- ☐ foster care?
- ☐ education?
- ☐ vocational training courses?
- ☐ any other alternatives to institutional care?

Does legislation, policy and practice ensure that children are dealt with in a manner

- ☐ appropriate to their well-being?

proportionate to

- ☐ their circumstances?
- ☐ the offence?

How to use the checklist, *see page XIX*

article 40

Reminder: **The Convention is indivisible and its articles interdependent. Article 40 should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is particularly related to that of article 40 include:

Article 16: right to privacy
Article 19: protection from all forms of violence
Article 20: alternative care
Article 25: periodic review of placement/treatment
Article 37: prohibition of death sentence and life imprisonment; limits on restriction of liberty, etc.
Article 38: armed conflict
Article 39: rehabilitative care for victims

UNICEF/1095-85/Gray

Respect for existing human rights standards

Text of Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State Party; or

(b) International law in force for that State.

Summary

Article 41 ensures that the Convention's standards do not undermine any provisions "more conducive to the realization of the rights of the child" that are in national or in international law in force in a particular State. ■

Protecting existing standards

During the drafting of the Convention on the Rights of the Child, article 41 evolved from a suggestion that there should be an article relating to the applicability of provisions of other international instruments, in particular the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. During the drafting process it was broadened to cover "international law in force", and the discussion indicated that "international law" was to be given broad interpretation, covering customary international law (E/CN.4/1989/48, pp. 116 to 119, etc.; see Detrick, pp. 521 *et seq.*).

A key 1986 United Nations General Assembly resolution (resolution 41/120) includes guidelines relating to the elaboration of new international instruments. It urges Member States, when developing new international human rights standards, to give due consideration to the established international legal framework, to avoid undermining existing standards in any way.

The Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights in 1993, recalls this resolution, and "recognizing the need to maintain consistency with the high quality of existing international standards and to avoid proliferation of human rights instruments ... calls on the United Nations human rights bodies, when considering the elaboration of new international standards, to keep those guidelines in mind, to consult with human rights treaty bodies on the necessity for drafting new standards and to request the Secretariat to carry out technical reviews of proposed new instruments." (A/CONF.157/23, p. 14)

One example of the Committee on the Rights of the Child making reference to article 41 occurred in the report of its Day of General Discussion on "Children in armed conflict", when it reminded that article 41

"... invites States Parties to always apply the norms which are more conducive to the realization of the rights of the child, contained either in applicable international law or in national legislation." (Committee on the Rights of the Child, Report on the second session, September/October 1992, CRC/C/10, para. 68)

In this particular case, the Committee was encouraging States to refrain from recruiting children under 18 into armed forces. There was a dispute during the drafting of article 38 that it undermined existing standards of protection (see article 38, page 574 for further discussion). The Optional Protocol on the involvement of children in armed conflict improves the position on recruitment, but it still falls short of the desired goal of no recruitment, conscription or direct part in hostilities for under-18s:

Each of the Optional Protocols to the Convention on the Rights of the Child includes articles similar to article 41: article 5 of the Optional Protocol on the involvement of children in armed conflict states: "Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child". There is a similar provision in article 11 of the Optional Protocol on the sale of children, child prostitution and child pornography (for text, see Appendix 2, page 695).

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

- ☐ Has there been a review of national legislation to consider whether it includes or could include provisions more conducive to the rights of the child than those of the Convention?
- ☐ Has there been a review of applicable international law to consider whether it includes provisions more conducive to the rights of the child than those of the Convention?

Making Convention widely known

Text of Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Rights are of little use to people unless they are aware of them. Article 42 confirms States Parties' obligation to make the Convention on the Rights of the Child known "by appropriate and active means" to adults and children. The Committee on the Rights of the Child has underlined the importance of disseminating the Convention's principles and provisions to all sectors of the population. In addition, it has suggested that the Convention should be incorporated into school curricula and into the training of all those who work with or for children.

The two Optional Protocols to the Convention, on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict each contain provisions similar to article 42 (see pages 695 and 692). ■

Summary

A "comprehensive strategy" for dissemination

In its *Guidelines* for Initial and Periodic Reports, the Committee on the Rights of the Child has included the implications of article 42 under "General Measures of Implementation", linking it to article 4. In addition, under article 44(6) the Committee emphasizes the importance of widely publicizing at country-level States Parties' Initial and Periodic Reports, reports of discussions with the Committee and the Committee's Concluding Observations (see article 44(6), page 652).

In its comments on States Parties' reports, the Committee has emphasized that dissemination can achieve a variety of purposes:

- ensuring the visibility of children;
- enhancing respect for children;
- reaffirming the value of children's fundamental rights;
- enhancing democratic institutions;
- achieving national reconciliation;
- encouraging the protection of the rights of children belonging to minority groups;
- changing negative attitudes towards children;
- combating and eradicating existing prejudices against vulnerable groups of children and harmful cultural practices.

The Committee consolidated its advice to States in 2003, in its General Comment No. 5 on "General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)":

"Individuals need to know what their rights are. Traditionally in most, if not all, societies children have not been regarded as rights holders. So article 42 acquires a particular importance. If the adults around children, their parents and other family members, teachers and carers do not understand the implications of the Convention, and above all its confirmation of the equal status of children as subjects of rights, it is most unlikely that the rights set out in the Convention will be realized for many children.

"The Committee proposes that States should develop a comprehensive strategy for disseminating knowledge of the Convention throughout society. This should include information on those bodies – governmental and independent – involved in implementation and monitoring and on how to contact them. At the most basic level, the text of the Convention needs to be made widely available in all languages (and the Committee commends the collection of official and unofficial translations of the Convention made by OHCHR). There needs to be a strategy for dissemination of the Convention among illiterate people. UNICEF and NGOs in many States have developed child-friendly versions of the Convention for children of various ages – a process the Committee welcomes and encourages; these should also inform children of sources of help and advice.

"Children need to acquire knowledge of their rights and the Committee places special emphasis on incorporating learning about the Convention and human rights in general into the school curriculum at all stages. The Committee's General Comment No. 1 (2001) entitled 'The aims of education' (art. 29, para. 1), should be read in conjunction with this. Article 29, paragraph 1, requires that the education of the child shall be directed to '… the development of respect for human rights and fundamental freedoms…' The General Comment underlines: 'Human rights education should provide information on the content of human rights treaties. But children should also learn about human rights by seeing human rights standards implemented in practice whether at home, in school or within the community. Human rights education should be a comprehensive, lifelong process and start with the reflection of human rights values in the daily life and experiences of children.

"Similarly, learning about the Convention needs to be integrated into the initial and in-service training of all those working with and for children… The Committee reminds States Parties of the recommendations it made following its meeting on general measures of implementation held to commemorate the tenth anniversary of adoption of the Convention [Report on the twenty-second session, September/October 1999, CRC/C/90, para. 291], in which it recalled that 'dissemination and awareness-raising about the rights of the child are most effective when conceived as a process of social change, of interaction and dialogue rather than lecturing. Raising awareness should involve all sectors of society, including children and young people. Children, including adolescents, have the right to participate in raising awareness about their rights to the maximum extent of their evolving capacities'.

"The Committee recommends that all efforts to provide training on the rights of the child be practical, systematic and integrated into regular professional training in order to maximize its impact and sustainability. Human rights training should use participatory methods, and equip professionals with skills and attitudes that enable them to interact with children and young people in a manner that respects their rights, dignity and self-respect.

"The media can play a crucial role in the dissemination of the Convention and knowledge and understanding of it and the Committee encourages their voluntary engagement in the process, which may be stimulated by governments and by NGOs." *(Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, paras. 66 to 70)*

In its General Comment No. 9 on "The rights of children with disabilities", the Committee notes that knowledge of the Convention on the Rights of the Child and the specific provisions devoted to children with disabilities is a necessary and powerful tool to ensure the realization of their rights:

"States Parties are encouraged to disseminate knowledge by, inter alia, *conducting systematic awareness campaigns, producing appropriate material such as a child friendly version of the Convention in print and Braille and using the mass media to foster positive attitudes towards children with disabilities.*
"As for professionals working with and for children with disabilities, training programmes must include targeted and focused education on the rights of children with disabilities as a pre-requisite for qualification. These professionals include but are not limited to policy makers, judges, lawyers, law enforcement officers, educators, health workers, social workers and media personnel among others." *(Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, paras. 15 and 16)*

In its General Comment No. 7 on "Implementing child rights in early childhood", the Committee proposes that States should include human rights education within early childhood education (in the light of article 29 and the Committee's first General Comment on "The aims of education"):

"Such education should be participatory and empowering to children, providing them with practical opportunities to exercise their rights and responsibilities in ways adapted to their interests, concerns and evolving capacities. Human rights education of young children should be anchored in everyday issues at home, in childcare centres, in early education programmes and other community settings with which young children can identify."

The Committee also proposes appropriate training:

"… States Parties are encouraged to undertake systematic child rights training for children and their parents, as well as for all professionals working for and with children, in particular parliamentarians, judges, magistrates, lawyers, law enforcement officials, civil servants, personnel in institutions and places of detention for children, teachers, health personnel, social workers and local leaders. Furthermore, the Committee urges States Parties to conduct awareness-raising campaigns for the public at large." *(Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, paras. 33 and 41)*

The Committee proposes both an educational and a monitoring role for independent national human rights institutions in its General Comment No. 2 on "The role of independent national human rights institutions in the promotion and protection of the rights of the child":

"In accordance with article 42 of the Convention which obligates State Parties to 'make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike', sensitize the Government, public agencies and the general public to the provisions of the Convention and monitor ways in which the State is meeting its obligations in this regard;…
"Assist in the formulation of programmes for the teaching of, research into and integration of children's rights in the curricula of schools and universities and in professional circles;…
"Undertake human rights education which specifically focuses on children (in addition to promoting general public understanding about the importance of children's rights);…" *(Committee on the Rights of the Child, General Comment No. 2, 2002, CRC/GC/2002/2, para. 19(m) to (o))*

During discussion of Slovenia's Initial Report, a Committee member was reported as noting that the Convention "was addressed not only to all levels of government and society as a whole, but also to children themselves. Although most countries reporting to the Committee claimed that sufficient information was provided to children, schools and teacher training institutions to create awareness of the Convention and provided documentation in support of those claims, members of the Committee in their travels had found that, in general, the majority of children they met were unaware of the rights of the child or of the text of the Convention." (Slovenia CRC/C/SR.337, para. 20)

Training concerning Convention

The Committee has proposed specific training courses (both initial training and in-service retraining) for those working with children, mentioning in a variety of recommendations the following groups as targets for such training: judges, lawyers, law enforcement officials, personnel in detention/correctional facilities,

immigration officers, United Nations peacekeeping forces and military personnel, teachers, social workers, those providing psychological support to families and children, personnel and professionals working with or for children, those working in institutions for children, including welfare institutions, doctors, health and family-planning workers, government officials and decision makers, personnel entrusted with data collection under the Convention, and so forth. The *Guidelines for Periodic Reports (Revised 2005)* asks States to include in their reports statistical data on training on the Convention for professionals working with and for children, including, but not limited to:

(a) judicial personnel, including judges and magistrates;

(b) law enforcement personnel;

(c) teachers;

(d) health-care personnel;

(e) social workers.

(CRC/C/58/Rev.1, Annex, para. 3)

The Committee on the Rights of the Child has recommended specialized training, for example, in its 2005 General Comment No. 6 on "Treatment of unaccompanied and separated children outside their country of origin" (CRC/GC/2005/6, paras. 95 to 97).

Training proposed in the Committee's *Guidelines for Periodic Reports*

The original *Guidelines for Periodic Reports* prepared by the Committee on the Rights of the Child underlines repeatedly the importance of training as a strategy for implementation of the Convention. The *Guidelines* requests information on training programmes and the content of training in relation to the following:

Article 3 The extent to which the principle of the "best interests of the child" is included in the training of professionals dealing with children's rights. (para. 39)

Article 4 Measures taken to provide education on the Convention to public officials, as well as to train professional groups working with and for children, such as teachers, law enforcement officials, including police, immigration officers, judges, prosecutors, lawyers, defence forces, medical doctors, health workers and social workers. The extent to which the principles and provisions of the Convention have been included in professional training curricula and codes of conduct or regulations. (para. 22)

Article 5 Parental education programmes and training activities provided to relevant professional groups (for example social workers), including information on any evaluation of effectiveness.

Measures to convey knowledge and information about child development and the evolving capacities of the child to parents or other persons responsible for the child. (para. 63)

Article 7 Measures taken to provide adequate training to personnel working on registration of births. (para. 50)

Article 12 Measures to train professionals working with children to encourage children to exercise their right to express their views, and to give children's views due weight. Details of child development courses provided for: judges in general, family court judges, juvenile court judges, probation officers, police officers, prison officers, teachers, health workers and other professionals. Details of the number of courses about the Convention included in the curricula of: law schools, teacher training schools, medical schools and institutions, nursing schools, social work schools, psychology departments and sociology departments. (para. 46)

Article 19 Special training provided for relevant professionals in the protection of the child from all forms of violence, abuse, neglect, etc. (para. 89)

Article 22 Training courses for staff working with refugee children. (para. 120)

Article 23 Measures taken to ensure adequate training, including specialized training, for those responsible for the care of children with disabilities, including at the family and community levels and within relevant institutions. (para. 92)

Article 24 Campaigns, programmes, etc., developed to provide basic knowledge, information and support to the general population, including in particular parents and children, on child health, nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents. Measures adopted to improve the system of education and training of health personnel. (para. 95)

Article 28 Steps taken to enhance the competence of teachers and to ensure quality of teaching. (para. 106)

Article 29 Training provided to teachers to prepare them to direct teaching to the aims of education set out in article 29. (para. 113)

Article 34 Appropriate training for special units of law enforcement officials and police liaison officers dealing with children who have been sexually abused or exploited. (para. 159)

Article 35 Relevant training activities provided to competent authorities concerned with abduction, sale or traffic in children. (para. 161)

Article 36 Training activities for professional groups working with or for children on forms of exploitation prejudicial to the child's welfare. (para. 164)

Article 37(a) Educative and training activities developed, particularly with personnel in institutions, services and facilities working with and for children, aimed at preventing any form of ill-treatment. (para. 61)

Article 38 Appropriate training for professionals concerned with the protection of children affected by armed conflict, including the rules of international humanitarian law. (para. 123)

Article 40 Training activities for all professionals involved with the system of juvenile justice, including judges, prosecutors, lawyers, law enforcement officials, immigration officers and social workers, on the provisions of the Convention and the United Nations rules and guidelines in the field of juvenile justice. (para. 136)

(CRC/C/58)

Examination of States' reports

The Committee has stressed in various Concluding Observations the need for a "comprehensive strategy" for dissemination, an "ongoing and systematic approach", a "permanent information campaign", and "systematic and continuous steps". It invariably highlights dissemination of information on children's rights and training as key strategies for implementation, requiring both comprehensive and innovative approaches. It emphasizes the need to ensure dissemination of the Convention in all relevant languages.

The Committee encourages States to have recourse to international cooperation and the help of bodies such as the Office of the High Commissioner for Human Rights and UNICEF. It often identifies particular hard-to-reach groups of children, and particular groups of adults needing training. For example:

"The Committee notes with appreciation the efforts made by the State Party in translating the Convention on the Rights of the Child and the Children's Act into six Ghanaian widely spoken languages to facilitate its appreciation and use among the general public. It also notes the efforts made in carrying out sensitization programmes, including through civil society organizations with the assistance of the vibrant media. The Committee is, however, of the opinion that these measures are not implemented in an ongoing, comprehensive and systematic basis.

"The Committee recommends that the State Party strengthen its efforts to ensure that the provisions of the Convention are widely known and understood by adults and children. It also recommends the reinforcement of adequate and systematic training of all professional groups working for and with children, in particular law enforcement officials, teachers, including teachers in rural areas, religious and traditional leaders, health personnel and social workers, personnel in childcare institutions as well as the media." (Ghana CRC/C/GHA/CO/2, paras. 21 and 22)

"The Committee recommends that the State Party continue and strengthen its efforts to ensure that the provisions and the principles of the Convention are widely recognized and understood by adults and children alike. In this regard, it encourages the State Party to

continue to disseminate and raise awareness of the Convention among children and adults, particularly in remote areas. The Committee also invites the State Party to continue to develop creative and child-friendly methods of promoting and teaching the Convention." *(Thailand CRC/C/THA/CO/2, para. 23)*

"The Committee encourages the State Party to pursue efforts to promote children's rights education in the country, including initiatives to reach those vulnerable groups who are illiterate or without formal education." *(India CRC/C/15/Add.115, para. 25)*

When it examined India's Second Report, it expanded on this:

"In line with its previous recommendations …, the Committee recommends that the State Party:
(a) Strengthen its efforts to disseminate the principles and provisions of the Convention, and make those efforts systematic, in order to sensitize society about children's rights through social mobilization;
(b) Systematically involve parliamentarians and community and religious leaders in its programmes to eradicate customs and traditions that impede the implementation of the Convention, and adopt creative measures of communications for illiterate people and for people in remote areas;
(c) Undertake systematic education and training on the provisions of the Convention for all professional groups working for and with children, in particular, judges, lawyers, law enforcement officials, civil servants, municipal and local workers, personnel working in institutions and places of detention for children, teachers, health personnel, including psychologists, and social workers;
(d) Further promote human rights education, including the rights of the child, in primary and secondary school curricula as well as in the curricula for teacher training;
(e) Seek technical assistance from, among others, OHCHR, UNESCO and UNICEF." *(India CRC/C/15/Add.228, para. 24)*

In examination of successive reports from States, the Committee often congratulates them on a variety of initiatives in disseminating knowledge of rights, but finds these still inadequate and proposes additional actions. For example, when it examined Lebanon's Second Report, it stated:

"While noting with appreciation the efforts undertaken by the State Party to publicize the principles and provisions of the Convention widely, including the convening of a Children's Parliament and press conference and integration of the Convention in school curricula, as well as the interest of the media, the Committee is of the opinion that the measures to create widespread awareness and understanding of the principles and provisions of the Convention need to be further strengthened and implemented in an ongoing, systematic basis.
"The Committee reiterates its recommendation … that the State Party strengthen its awareness-raising efforts and encourages the State Party to undertake systematic education and training on the rights in the Convention for all professional groups working for and with children, in particular parliamentarians, judges, lawyers, law enforcement officials, civil servants, municipal workers, personnel working in institutions and places of detention for children, teachers, health personnel, including psychologists, social workers, religious leaders, as well as children and their parents. Technical assistance from, among others, OHCHR and UNICEF could be requested in this regard." *(Lebanon CRC/C/15/Add.169, paras. 19 and 20)*

When it examined Lebanon's Third Report, it had further recommendations:

"The Committee welcomes the State Party's efforts to promote awareness of the rights of the child and to disseminate the Convention in close collaboration with UNICEF and non-governmental organizations. Nevertheless, the Committee considers that education for children and the public at large and training activities for professional groups on children's rights need ongoing attention.
"The Committee recommends that the State Party strengthen its efforts to disseminate the Convention both to children and to the broader public, including appropriate material specifically for children translated in the different languages spoken in Lebanon, including those spoken by migrant and refugee children. In addition, it recommends that the State Party undertake systematic education and training programmes on the provisions of the Convention and the Optional Protocol on the sale of children, child prostitution and child pornography for all professional groups working for and with children, such as judges, lawyers, law enforcement officials, civil servants, teachers, and health personnel including psychologists and social workers." *(Lebanon CRC/C/LBN/CO/3, paras. 23 and 24)*

Similarly, examining Second Reports from Burkina Faso and Saudi Arabia, the Committee commented:

"The Committee is aware of the measures undertaken to promote widespread awareness of the principles and provisions of the Convention and welcomes the establishment of a Ministry for the Promotion of Human Rights. The Committee is of the opinion that these measures need to be strengthened by providing the necessary resources. In this respect, the Committee is concerned at the

lack of a systematic plan to introduce training and awareness among professional groups working for and with children.
"In line with its previous recommendations..., the Committee recommends that the State Party:
(a) Strengthen its efforts and systematize the dissemination of the principles and provisions of the Convention as a measure to sensitize society to children's rights through social mobilization;
(b) Systematically involve community leaders in its programmes in order to fight against customs and traditions which impede the implementation of the Convention, and adopt creative measures of communications for illiterate people;
(c) Undertake systematic education and training in the provisions of the Convention for all professional groups working for and with children, in particular parliamentarians, judges, lawyers, law enforcement officials, civil servants, municipal and local workers, personnel working in institutions and places of detention for children, teachers, health personnel, including psychologists, and social workers;
(d) Make sure that the new Ministry for the Promotion of Human Rights is paying adequate attention to children's rights and their implementation throughout the State Party;
(e) Further promote human rights education, including the rights of the child, in school curricula, beginning in primary school, as well as in the curricula for teacher training;
(f) Seek technical assistance from, among others, OHCHR, UNESCO and UNICEF." (Burkina Faso CRC/C/15/Add.193, paras. 19 and 20)

"With regard to article 42 of the Convention, the Committee notes with appreciation the State Party's efforts to disseminate the Convention, inter alia, *through several programmes and activities of the Saudi National Commission for Childhood. Nevertheless, the Committee is concerned that professionals working with and for children and in particular the general public, including children and their parents and other caregivers, are not provided with sufficient information and systematic training in international human rights standards, including the rights of the child.*

"The Committee recommends that the State Party:
(a) Develop systematic and targeted human rights training programmes, including the principles and provisions of the Convention, for all professional groups working with and for children (such as judges, lawyers, law enforcement officials,
including religious police (known as mutawwa*) and other religious clerics, personnel working in institutions and places of detention for children, as well as teachers, health personnel and social workers);*
(b) Seek innovative ways and methods to disseminate the Convention, including through a tailored communication strategy which links the Convention with existing positive values and traditions in Saudi society, and raise awareness of the rights of the child, including vulnerable children, among children and their parents and civil society;
(c) Develop and adopt a communication strategy in order to involve the media in the dissemination of the principles and provisions of the Convention; and
(d) Seek technical assistance from the Office of the United Nations High Commissioner for Human Rights (OHCHR) and UNICEF, among others, in this regard." (Saudi Arabia CRC/C/SAU/CO/2, paras. 19 and 20)

The Committee is concerned where States' dissemination of the Convention is selective, for example, telling Bahrain:

"The Committee is concerned that the Convention has not been published in its entirety. In particular, that articles 11, 21, 22, 38, 41 to 54 have been deleted in the published text." (Bahrain CRC/C/15/Add.175, para. 17)

When the Committee examined the Second Reports of Latvia and Lithuania, it noted with appreciation that these States had translated and published the *Implementation Handbook for the Convention on the Rights of the Child*. It encouraged Lithuania to widely disseminate the *Implementation Handbook* and to disseminate the Convention further, including through incorporating human rights education in the curricula of both primary and secondary schools. (Latvia CRC/C/LVA/CO/2, para. 18; Lithuania CRC/C/LTU/CO/2, paras. 20 and 21)

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 42, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 42 is relevant in particular to the **departments of education, social welfare, justice – but all departments should be involved**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?
- ☐ which involves where necessary international cooperation?

(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?

• Specific issues in implementing article 42

Has the State taken active steps to make the provisions and principles of the Convention widely known throughout the population

- ☐ to adults?
- ☐ to children?

- ☐ Has the Convention, and information about its implications, been translated into all languages in use throughout the jurisdiction and appropriately disseminated?
- ☐ Has the Convention, and information about its implications, been disseminated in appropriate media for children with disabilities and adults?

Has the Convention and information about its implications been incorporated into the curriculum of

- ☐ all schools?
- ☐ all other educational institutions?

training courses – both initial and in-service – for those working with or for children, including

- ☐ judges?
- ☐ lawyers?
- ☐ law enforcement officials?

How to use the checklist, *see page XIX*

- ☐ personnel in detention/correctional facilities?
- ☐ immigration officers?
- ☐ military personnel and United Nations peacekeeping forces?
- ☐ teachers?
- ☐ social workers?
- ☐ those providing psychological support to families and children?
- ☐ those working in institutions for children, including welfare institutions?
- ☐ doctors, health and family planning workers?
- ☐ government officials and decision makers?
- ☐ personnel entrusted with data collection under the Convention?
- ☐ other personnel and professionals working with or for children?

Have programmes for dissemination of the Convention and its principles and provisions involved

- ☐ the mass media?
- ☐ appropriate NGOs and civil society?
- ☐ children's groups?

☐ Have steps been taken to encourage the understanding of the principles and provisions of the Convention by the mass media and by information and publishing agencies?

Has the State undertaken or commissioned research into awareness of the Convention and its principles and provisions among

- ☐ the general public?
- ☐ those working with or for children?
- ☐ children?

Reminder: **The Convention is indivisible and its articles interdependent. Article 42 should not be considered in isolation. Article 42 requires dissemination of information to adults and children alike about all the principles and provisions of the Convention, in the light of the non-dicrimination principle in article 2.**

UNICEF/97-0279/Noorani

The Committee on the Rights of the Child

Text of Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of 18[1] experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

1 The General Assembly, in its resolution 50/155 of 21 December 1995, approved the amendment to article 43, paragraph 2, replacing the word "ten" with the word "eighteen". The amendment entered into force on 18 November 2002 when it had been accepted by a two-thirds majority of the States Parties (128 out of 191).

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from the United Nations resources on such terms and conditions as the Assembly may decide.

Summary

Article 43 sets out the monitoring role of the Committee on the Rights of the Child, the procedures for electing its members and for its meetings. ■

Role of the Committee

The function of the Committee on the Rights of the Child is to provide an international mechanism for monitoring progress on implementation of the Convention on the Rights of the Child – in the words of the Convention: "For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the ... Convention" (article 43(1)). Its major tasks are to examine the Initial and Periodic Reports submitted to it by States Parties under article 44 of the Convention, and working with other human rights treaty bodies, United Nations agencies and other bodies to promote the Convention and the realization of the rights of the child.

Committee membership and election

The Committee comprises 18 "experts of high moral standing and recognized competence in the field covered by this Convention". An amendment to article 43, to increase the number of members from 10 to 18, came into force in November 2002, when it had been accepted by a two-thirds majority of the States Parties to the Convention (128 out of 191). The General Assembly had approved the amendment in its resolution 50/155 of 21 December 1995. The amendment was proposed because of the substantial workload of the Committee, arising from the Convention's rapid and almost universal ratification. The increase in membership enabled the Committee to operate in two chambers simultaneously for a period, thus examining more reports in each session and removing a backlog of unexamined reports which had built up (see article 44 for further details, page 643).

Members are elected to serve for a period of four years and are eligible for re-election if they are nominated again at the expiry of their term. Each State Party is entitled to nominate one of its nationals to stand for election. Elections are held every second year. At least four months prior to an election, the Secretary-General invites each State Party to nominate one person from among its nationals within two months. A list is prepared of all those nominated and an election by secret ballot is held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. The Convention requires that consideration be given in the elections to "equitable geographical distribution, as well as to the principal legal systems" (article 43(2)).

Members serve in a personal capacity. They do not represent their State or any organization. In the report on its second session, Committee members noted the importance of the independence of the elected experts:

"They recalled the provision of the Convention which states that members shall serve in their personal capacity; they reaffirmed that the mandate derives from the provisions and principles of the Convention on the Rights of the Child and that the Committee members are solely accountable to the children of the world. It was pointed out that, although elected by States Parties' representatives, members do not represent their country, Government or any other organization to which they may belong. In view of the relevance of this consideration, and in order to ensure the principle of impartiality, the members of the Committee reiterated the desirability of not participating in the Committee's discussions during the examination of the reports submitted by their own Governments. They also recognized that, when acting in the framework of the rights of the child, there is a need to clearly distinguish between their personal or professional role and their role as members of the Committee." *(Committee on the Rights of the Child, Report on the second session, September/October 1992, CRC/C/10, p. 33)*

When a member joins the Committee he or she makes the following declaration: "I solemnly declare that I will perform my duties and exercise my powers as a member of the Committee on the Rights of the Child honourably, faithfully, impartially and conscientiously."

If a member fails for whatever reason to complete a term of office, the State Party that nominated the member appoints another expert from among its nationals – subject to the approval of the Committee – to serve for the remainder of the term.

Rules of Procedure and officers

The Committee is responsible for establishing its own rules of procedure, and elects its officers for two years. According to the Provisional Rules of Procedure adopted by the Committee at its twenty-second meeting (first session) on 15 October 1991 (CRC/C/4) the officers to be elected are a chairperson, three vice-chairpersons and a rapporteur. The Rules were revised in 2005 to take account of the increase in number of members (CRC/C/4/Rev.1).

Meetings of the Committee

The Committee meets three times a year, each session being of three weeks duration (in January, May/June and September/October) at the Palais Wilson in Geneva, Switzerland. At these sessions it examines States Parties' reports in discussion with government representatives and conducts any other formal business (including, for example, General Discussions). Immediately following each formal session, there is a one-week meeting

of a Working Group of Committee members (the "Pre-sessional Working Group") to prepare for the following session. For details of the reporting process, see article 44, page 643.

Days of General Discussion

The Committee included in its Rules of Procedure the ability to devote meetings during its regular session to General Discussions on one specific article of the Convention or a related subject. The purpose is for the Committee to explore in depth with United Nations agencies, NGOs and individual experts particular issues, to improve its work in monitoring implementation, and to provide recommendations for States Parties and others.

Days of General Discussion have been held on:

- Children in armed conflict (5 October 1992)
- Economic exploitation of the child (4 October 1993)
- The role of the family in the promotion of the rights of the child (10 October 1994)
- The girl child (23 January 1995)
- Administration of juvenile justice (9 October 1995)
- The child and the media (7 October 1996)
- The rights of children with disabilities (6 October 1997)
- Children living in a world with AIDS (5 October 1998)
- Tenth anniversary of the Convention on the Rights of the Child commemorative meeting: achievements and challenges (the Committee co-organized with the Office of the High Commissioner for Human Rights a two-day workshop celebrating the tenth anniversary of adoption of the Convention on 30 September and 1 October 1999)
- Violence against children 1: State violence against children (first of two linked General Discussions, 22 September 2000)
- Violence against children 2: Violence against children, within the family and in schools (28 September 2001)
- The private sector as a service provider and its role in implementing child rights (20 September 2002)
- The rights of indigenous children (20 September 2003)
- Implementing child rights in early childhood (17 September 2004)
- Children without parental care (16 September 2005)
- The right of the child to be heard (15 September 2006)

(For recommendations adopted following these Days of General Discussion, see www.ohchr.org/english/bodies/crc/discussion.htm.)

General Comments

As with other treaty bodies, the Committee's Rules of Procedure allow it to make General Comments "based on the articles and provisions of the Convention with a view to promoting its further implementation and assisting States Parties in fulfilling their reporting obligations". It has adopted the following General Comments:

- The aims of education, article 29(1), No. 1, 2001, CRC/GC/2001/1
- The role of independent national human rights institutions in the promotion and protection of the rights of the child, No. 2, 2002, CRC/GC/2002/2
- HIV/AIDS and the rights of the child, No. 3, 2003, CRC/GC/2003/3
- Adolescent health and development in the context of the Convention on the Rights of the Child, No. 4, 2003, CRC/GC/2003/4
- General measures of implementation for the Convention on the Rights of the Child, No. 5, 2003, CRC/GC/2003/5
- Treatment of unaccompanied and separated children outside their country of origin, No. 6, 2005, CRC/GC/2005/6
- Implementing child rights in early childhood, No. 7, 2005, CRC/C/GC/7/Rev. 1
- The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28.2 and 37, *inter alia*), No. 8, 2006, CRC/C/GC/8
- The rights of children with disabilities, No. 9, 2006, CRC/C/GC/9
- Children's rights in Juvenile Justice, No. 10, 2007, CRC/C/GC/10

The Committee may also make general recommendations based on information received during the reporting process or from other sources. In 1998 it adopted a recommendation on children in armed conflict (CRC/C/80, p. 3) and in 1999 on the administration of juvenile justice (CRC/C/90, p. 3). At its thirty-seventh session, in September/October 2004, it adopted a recommendation on

"Children without parental care", proposing that the United Nations Commission on Human Rights (now the Human Rights Council) should consider establishing a working group to prepare a draft of United Nations Guidelines for the protection and alternative care of children without parental care by 2008. The Committee has adopted other recommendations concerning the reporting process under the Convention and the two Optional Protocols (see article 44, page 643).

Documentation of activities

The Office of the High Commissioner for Human Rights is the Secretariat for the Committee on behalf of the Secretary-General of the United Nations. Summary Records are prepared for all public meetings of the Committee (all meetings are held in public unless the Committee decides otherwise). The Initial and Periodic Reports of States Parties, Concluding Observations of the Committee, Summary Records and Reports on the Committee's sessions are generally made available in the Committee's three working languages (English, French and Spanish); in addition the Committee may decide to make particular documents available in one or more of the other "official" languages of the Convention (Arabic, Chinese and Russian).

The Committee has a dedicated website at www.ohchr.org/english/bodies/crc/index.htm. Documents available now also normally include the list of issues sent to States in advance of the examination and any responses received, the text of the speech of the head of the state delegation and list of members of the delegation.

The Committee's official documents are available from:

Secretariat to the Committee on the Rights of the Child, Office of the High Commissioner for Human Rights, office 1-065, Palais des Nations, 8-14 Avenue de la Paix, 1211 Geneva 10, Switzerland (fax 00 41 22 917 9022).

Also from the Distribution and Sales Section, Palais des Nations, 8-14 Avenue de la Paix, 1211 Geneva 10, Switzerland.

article 43

The Committee in 2007

The members of the Committee, as of 1st March 2007, with their nominating State and the date their term of office expires, are as follows:

Name of member	Nominating State	Term of office
Ms. Agnes Akosua AIDOO	Ghana	02.2011
Ms. Ghalia Mohd Bin Hamad AL-THANI	Qatar	02.2009
Ms. Joyce ALUOCH	Kenya	02.2009
Mr. Luigi CITARELLA	Italy	02.2011
Mr. Kamel FILALI	Algeria	02.2011
Ms. Maria HERCZOG	Hungary	02.2011
Ms. Moushira KHATTAB	Egypt	02.2011
Mr. Hatem KOTRANE	Tunisia	02.2011
Mr. Lothar Friedrich KRAPPMANN	Germany	02.2011
Ms. Yanghee LEE (Chairperson)	Republic of Korea	02.2009
Ms. Rosa María ORTIZ	Paraguay	02.2011
Mr. David Brent PARFITT	Canada	02.2009
Mr. Awich POLLAR	Uganda	02.2009
Mr. Dainius PURAS	Lithuania	02.2011
Mr. Kamal SIDDIQUI	Bangladesh	02.2009
Ms. Lucy SMITH	Norway	02.2009
Ms. Nevena VUCKOVIC-SAHOVIC	Serbia	02.2009
Mr. Jean ZERMATTEN	Switzerland	02.2009

UNICEF/4404Z/Murray-Lee

Reporting obligations of States Parties

Text of Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

(a) Within two years of the entry into force of the Convention for the State Party concerned,

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not in its subsequent reports submitted in accordance with paragraph 1(b) of the present article repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Summary

Article 44 sets out the obligations of States Parties to the Convention on the Rights of the Child to report to the Committee on the Rights of the Child, within two years of ratification, and then every five years. The Committee may request further information. The Committee adopts a report at the end of each of the three sessions it holds each year and reports on its activities every two years to the General Assembly, through the Economic and Social Council. States Parties are required to make their reports widely available to the public in their own countries. ■

Initial reports and periodic reports

The Convention comes into force in a State Party on the thirtieth day after the State has formally adopted the Convention (deposited its instrument of ratification or accession with the Secretary-General of the United Nations). The State Party then acquires obligations to report to the Committee:

- within two years of the entry into force of the Convention (initial report);
- thereafter every five years (periodic reports) (article 44(1)(a) and (b)).

Periodic reports become due five years after the due date for delivery of the initial report; in principle, delay in submitting an initial report, or delay in the examination of the report by the Committee, does not alter the date on which the next report is due.

However, during its twenty-ninth and thirty-second sessions (January/February 2002 and January 2003) the Committee on the Rights of the Child adopted recommendations which acknowledge the delays occurring in submission and in examination of reports. In the recommendations, the Committee adopts special rules allowing exceptionally for the combining of second and third, or third and fourth reports, emphasizing that these rules apply only on the basis of an exceptional measure taken for one time only by a State Party in an attempt to provide an opportunity for them to respect the strict reporting periodicity foreseen in the Convention (article 44(1)). The Committee notes that it will inform States Parties in the related Concluding Observations about the deadline for the submission of their second and, where appropriate, following periodic reports The recommendation states that the Committee has decided to adopt the following rules:

"(a) When the second periodic report is due within the year following the dialogue with the Committee, the State Party shall be requested to submit that report combined with the third one; this rule also applies, *mutatis mutandis*, when a similar situation occurs with the third and fourth periodic reports.

"(b) When the second periodic report is already due at the time of the dialogue and the third report is due two years or more after the dialogue with the State Party, the State Party shall be requested to submit the combined second and third reports at the time when the third report is due, as prescribed under the terms of the Convention; this rule also applies, *mutatis mutandis*, in cases when the second and third reports are due at the time of the dialogue;…" (Report on the twenty-ninth session, January/February 2002, CRC/C/114, p. 5)

At its thirty-second session, in January 2003, it adopted a further recommendation, reiterating its decision to inform States Parties in Concluding Observations of the deadline for the submission of their second and, where appropriate, following periodic reports, and adopting a further additional rule: "When the second periodic report is due between one and two years following the dialogue with the Committee, the State Party shall be requested to submit that report combined with the third one." But the Committee urges the State Party, in order to reduce the delay, "to submit its consolidated second and third report 18 months before its due date. This rule also applies, *mutatis mutandis*, when a similar situation occurs with the third and fourth periodic reports". The Committee's recommendations stress that these rules apply only on the basis of an exceptional measure taken for one time only by a State Party in an attempt to provide an opportunity for them to respect the strict reporting periodicity foreseen in the Convention (article 44(1)). (Report on the thirty-second session, January 2003, CRC/C/124, pp. 4 and 5)

At its thirtieth session, in May 2002, it adopted another recommendation, on the content and size of States' reports. It requests States Parties to submit periodic reports that are "concise, analytical and focusing on key implementation issues", not exceeding 120 regular-size pages. It also requests States to focus in particular on two aspects of implementation:

"(a) informing the Committee about progress made in the enjoyment of human rights by children, factors and difficulties affecting the degree of fulfilment of obligations under the Convention, and measures taken to implement the Committee's Concluding Observations – by explicitly referring to them – adopted with respect to the previous report of a State Party;

(b) Informing the Committee about fundamental developments in the State Party during the reporting period with regard to the human rights of children. In this regard, States Parties should avoid repeating information already contained in previous reports submitted to the Committee…"

(Report on the thirtieth session, May/June 2002, CRC/C/118, pp. 4 and 5)

The Committee recommends that "in addition to information on legislative developments and the situation *de jure*, States Parties give due attention in their periodic reports to analysing the situation

in the State Party *de facto*, including information on concrete measures taken to enhance the implementation of domestic and international legal provisions and principles and, if any, related limitations and obstacles" (CRC/C/118, p. 5).

The Committee can request States Parties to provide further information "relevant to the implementation of the Convention" (article 44(4)). The Committee has indicated that it will, if necessary, take urgent action to seek to prevent serious violations of the Convention. The Committee sees its "urgent action procedure" as part of the reporting process under article 44, and it may request additional information from a State Party on a particular situation or issue and also propose a visit to the State. If urgent actions arise that are relevant to the sphere of competence of another treaty body, the Committee will inform the other body (Report on the second session, September/October 1992, CRC/C/10, paras. 54 to 58; Report on the fourth session, September/October 1993, CRC/C/20, paras. 155 and 156). The Committee has initiated urgent actions in only a small number of cases.

Committee meeting in two chambers: Following the increase in the number of members of the Committee to 18 (see article 43, page 639), the Committee resolved in January 2004 that from the January 2005 session, for an initial period of two years, it would consider States Parties' reports in two parallel chambers, each consisting of nine members of the Committee, "taking due account of equitable geographical distribution, thereby increasing the number of States Parties' reports to be examined from 27 to 48 a year" (Report on the thirty-fourth session, CRC/C/133, p. 5). The purpose of this innovation was to reduce the backlog of unexamined reports. In fact, the Committee met in two chambers only for part of the final session in 2005 and the three sessions in 2006. It continued to adopt its Concluding Observations on each State report in plenary session. The Committee noted that it will consider breaking into two chambers again if a further backlog of reports requiring examination builds up.

Reporting guidelines

The Committee has drafted *General Guidelines regarding the form and contents of Initial Reports* (CRC/C/5) and *General Guidelines regarding the form and contents of Periodic Reports* (CRC/C/58). In 2005 it issued revised Guidelines for periodic reports (CRC/C/58/Rev.1; see Appendix 3, page 699); an annex provides more detail on the type of statistical data required by the Committee. In the Guidelines, the Committee has grouped the provisions of the Convention in clusters, to assist States Parties in the preparation of their reports (see box for details of clusters).

New core guidelines. Draft "Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific targeted documents" were prepared in June 2005 (Seventeenth meeting of chairpersons of the human rights treaty bodies, HRI/MC/2005/3). The aim, set out in the guidelines, is to:

"(a) Avoid unnecessary duplication of information already submitted to other treaty bodies;

(b) Minimize the possibility that reports may be considered inadequate in scope and insufficient in detail to allow the treaty bodies to fulfil their mandates;

(c) Reduce the need for a committee to request supplementary information before considering a report;

(d) Enable a consistent approach by all committees in considering the reports presented to them; and

(e) Help each committee to consider the situation regarding human rights in every State Party on an equal basis." (HRI/MC/2005/3, para. 4, p. 5)

Each State report will consist of two complementary documents – an up-to-date common core document and a targeted treaty-specific document: "The common core document will be submitted to all treaty bodies in conjunction with a targeted report specific to the relevant treaty. Both documents form an integral part of the State's report: the State Party will not be considered by each committee to have fulfilled its reporting obligations under the relevant treaty until it has submitted both parts of the report containing up-to-date information." (HRI/MC/2005/3, para. 26, p. 11)

States would be able to submit the two documents separately: "However, States are advised to approach all of their reporting obligations as part of a coordinated process and should try to minimize the delay between the submission of the common core document and the submission of the treaty-specific document to each committee to ensure that the common core document is as up-to-date as possible when the treaty-specific document is considered. A treaty body may request that the common core document be updated if it considers that the information it contains is out of date. Updates may be submitted in the form of an addendum to the existing common core document or a new revised version, depending on the extent of the changes which need to be incorporated." (HRI/MC/2005/3, para. 29, p. 11)

Guide to the Committee's Guidelines

In its *Guidelines* for initial reports and periodic reports, the Committee on the Rights of the Child has grouped the provisions of the Convention in clusters: "This approach reflects the holistic perspective on children's rights taken by the Convention: i.e. that they are indivisible and interrelated, and that equal importance should be attached to each and every right recognized therein." (CRC/C/58/ Rev.1, para. 3)

The following are the clusters:

I General measures of implementation

Article 4: implementation obligations; article 42: making Convention widely known; article 44(6): making reports widely available (in *Guidelines for Periodic Reports*, also covers article 41: respect for existing standards).

II Definition of the child

Article 1.

III General principles

Article 2: non-discrimination; article 3(1): best interests to be a primary consideration; (the *Guidelines for Periodic Reports* also covers article 3(2): the State's obligation to ensure necessary care and protection; and article 3(3): standards for institutions, services and facilities); article 6: the right to life, survival and development (see also, VI, below); article 12: respect for the views of the child.

IV Civil rights and freedoms

Article 7: right to name, nationality and to know and be cared for by parents; article 8: preservation of child's identity; article 13: freedom of expression; article 14: freedom of thought, conscience and religion; article 15: freedom of association and peaceful assembly; article 16: protection of privacy; article 17: child's access to information, and role of mass media; article 37(a): right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment. (The original *Guidelines for Periodic Reports* indicates (para. 48) that these are not the only provisions in the Convention which constitute civil rights and freedoms).

V Family environment and alternative care

Article 5: parental guidance and child's evolving capacities; article 18(1) and (2): parental responsibilities and State's assistance; article 9: separation from parents; article 10: family reunification; article 11: illicit transfer and non-return; article 27(4): recovery of maintenance for the child; article 20: children deprived of their family environment; article 21: adoption; article 25: periodic review of placement and treatment; article 19: protection from all forms of violence; article 39: rehabilitation and reintegration of victims of violence (see also VIII below).

VI Basic health and welfare

Article 6: right to life, survival and development (see also, III above); article 18(3): support for working parents; article 23: rights of children with disabilities; article 24: right to health and health services; article 26: right to social security; article 27(1)-(3): right to adequate standard of living.

VII Education, leisure and cultural activities

Article 28: right to education; article 29: aims of education; article 31: right to leisure, play and participation in cultural and artistic activities.

VIII Special protection measures

A Children in situations of emergency

Article 22: refugee children; article 38: children and armed conflict; article 39: rehabilitation of child victims (see also V above).

B Children involved with the system of administration of juvenile justice
Article 40: administration of juvenile justice; article 37(a): prohibition of capital punishment and life imprisonment; article 37(b)-(d): restriction of liberty; article 39: rehabilitation and reintegration of child victims (see also V above).

C Children in situations of exploitation
Article 32: child labour; article 33: drug abuse; article 34: sexual exploitation; article 35: sale, trafficking and abduction; article 36: other forms of exploitation.

D Children belonging to a minority or an indigenous group
Article 30.

Committee's "overview" of the reporting process

The Committee adopted an "overview" of the reporting procedures at its seventh session in October 1994, intended

"... to make the current procedures more transparent and readily accessible to States Parties and others interested in the implementation of the Convention, including United Nations agencies and other competent bodies such as non-governmental organizations.
"The Committee strongly recommends all States Parties to report to it in accordance with the guidelines and in a thorough and timely manner." (Report on the seventh session, September/October 1994, CRC/C/34, Annex V)

The overview describes the process of examination of States Parties' reports, and procedures for follow-up and for overdue reports (see box on page 648 for extracts). An overview of the working methods of the Committee is also available at www.ohchr.org/english/bodies/crc/workingmethods.htm.

Pre-sessional Working Group meetings

As noted under article 43 (pages 639 and 640), at each session the Committee holds a one-week meeting of a "Pre-sessional Working Group" of Committee members to prepare for the examination of States Parties' reports at the following session. The purpose is to enable the Committee to invite specialized agencies, UNICEF and "other competent bodies" to provide expert advice on the implementation of the Convention (see article 45, page 655). "Other competent bodies" includes non-governmental organizations (NGOs) and independent human rights institutions. The meetings of the Pre-sessional Working Group are not open to the public.

At its twenty-second session in 1999 the Committee adopted "Guidelines for the participation of partners (NGOs and individual experts) in the Pre-sessional Working Group of the Committee on the Rights of the Child". These emphasize that written information should be submitted at least two months in advance. The purpose is to provide the Committee "with a comprehensive picture and expertise as to how the Convention is being implemented in a particular country". Based on the written information, the Committee issues a written invitation to selected NGOs to participate in the Pre-sessional Working Group.

In May 1999 the Committee decided to reintroduce the system of "country rapporteurs" in which one, or more often two, members of the Committee are designated as rapporteurs for each report to be examined. The rapporteurs' responsibilities are:

- to maintain contact and work closely with the appropriate staff member in the secretariat throughout the process;
- to "lead" the discussion during both the pre-session and the session;
- to finalize the draft List of Issues to be addressed to the State Party after the Pre-sessional Working Group meeting;
- to finalize and ensure the quality of the draft concluding observations and recommendations.

(Report on the twenty-second session, September/October 1999, CRC/C/90, para. 318)

The outcome of the Pre-sessional Working Group is a "List of Issues" to be raised with the States Parties whose reports are to be examined at the next session. The List of Issues is now in four parts: part I is a request for specific additional and updated information to be submitted by the State in writing before the examination; part II asks for copies of the text of the Convention in all official languages of the State Party and in other languages or dialects, including any simplified (child-friendly) versions; part III asks for a brief update on new legislation, institutions,

programmes and policies; part IV is a "preliminary list" of major issues which the Committee intends to take up during the dialogue with the State Party, not requiring written responses and noting that other issues may be raised in the course of the dialogue.

Committee on the Rights of the Child: "Overview of the Reporting Procedures" – extracts

"B. Examination of States Parties' reports
Work of the Pre-sessional Working Group

(See also Guidelines on Pre-sessional Working Group adopted by the Committee in 1999 on page 650.)

Discussions of a State Party report with government representatives are prepared by a Working Group.

The Working Group normally meets immediately after one session of the Committee to prepare for the next one. All Committee members are invited to the pre-sessional meeting. These meetings are not open to the public and there are no formal records. Any decisions taken by the Working Group are reported to the Committee at its next plenary session.

The principal purpose of the Working Group is to identify in advance the most important issues to be discussed with the representatives of the States. The intent is to give advance notice to the States Parties of the principal issues which might arise in the examination of their reports. The Convention on the Rights of the Child is wide-ranging, comprehensive and complex; the possibility for government representatives to prepare in advance their answers to some of the principal questions is likely to make the discussion more constructive.

The Secretariat prepares country files for the Pre-sessional Working Group, containing information relevant to each of the reports to be examined For this purpose the Committee invites relevant United Nations bodies and specialized agencies, non-governmental organizations and other competent bodies to submit appropriate documentation to the Secretariat. Some of the information is included in the country analysis documents, other information is placed in files which are available to Committee members during the sessions.

A special emphasis is placed on receiving relevant documentation from bodies and agencies within the United Nations system, such as UNICEF, ILO, WHO, UNHCR, UNESCO, UNDP and the World Bank, as well as from other human rights treaty bodies and mechanisms, and from non-governmental organizations, both domestic and international. Such contributions are also of importance in regard to discussions about technical advice and assistance in the light of article 45(b) of the Convention. Representatives of the United Nations bodies and agencies take part in the meetings of the Working Group and give expert advice. The Working Group may also invite representatives of other competent bodies, including non-governmental organizations, to provide information.

The Working Group draws up a List of Issues which is sent to the respective Government through diplomatic channels. In order to facilitate the efficiency of the dialogue, the Committee requests the State Party to provide the answers to its List of Issues in writing and in advance of the session, in time for them to be translated into the working languages of the Committee.

An invitation to a forthcoming session of the Committee is also sent to the State Party, indicating the date, time and venue for the planned discussion.

Presentation of the report

The State Party report will be discussed in open and public meetings of the Committee, during which both the State representatives and Committee members take the floor. Relevant United Nations bodies and agencies are represented. Summary Records of the meetings are issued and the United Nations Department of Public Information is invited to cover the proceedings for the purpose of their Press Releases. Other journalists are free to attend, as are representatives of non-governmental organizations and any interested individual.

With the factual situation largely clarified in writing, there should be room in the discussions to analyze 'progress achieved' and 'factors and difficulties encountered' in the implementation of the Convention. As the purpose of the whole process is constructive, sufficient time should be given to discussions about 'implementation priorities' and 'future goals'. For these reasons, the Committee welcomes the representation of the State Party to be a delegation with concrete involvement in strategic decisions relating to the rights of the child. When delegations are headed by someone with governmental responsibility, the discussions are likely to be more fruitful and have more impact on policy-making and implementation activities.

After a brief introduction of the report, the State delegation is asked to provide information on subjects covered by the List of Issues, starting with the first section of the Guidelines, i.e. general measures of implementation. Then the dialogue starts. Committee members may want to ask further questions or make comments on the written or oral answers, and the delegation may respond. The discussion moves step by step through the next group of issues according to the Guidelines.

States Parties which have made reservations to the Convention may be asked about the implications of that position in the light of article 51, paragraph 2, of the Convention, which stipulates that reservations incompatible with the object and purpose of the Convention shall not be permitted. Another point of reference is the recommendation by the 1993 World Conference on Human Rights that reservations should be formulated as precisely and narrowly as possible and that States should regularly review any reservations with a view to withdrawing them.

Towards the end of the discussion, Committee members summarize their observations on the report and the discussion itself and may also make suggestions and recommendations. Lastly, the State delegation is invited to make a final statement. Afterwards, the Committee will, in a closed meeting, agree on written Concluding Observations which include suggestions and recommendations. If it is deemed that the information submitted is insufficient, or that there is a need to clarify a number of issues further, and it is agreed that the discussion about the report should continue at a later session, the observations will be preliminary and the State Party will be informed accordingly.

The Concluding Observations usually contain the following aspects: introduction; positive aspects (including progress achieved); factors and difficulties impeding the implementation; principal subjects for concern; suggestions and recommendations addressed to the State Party. The Preliminary Observations usually have a similar structure, but it is made clear that they are not final.

The Committee may in its observations request additional information from the State Party, in accordance with article 44 of the Convention, in order to be able to better assess the situation in the State Party. A deadline for submission of such written material will be determined.

The Concluding Observations are made public on the last day of a Committee session during the adoption of the report, of which they form a part. Once adopted, they are made available to the States Parties concerned, and also issued as official documents of the Committee. In accordance with article 44, paragraph 5, of the Convention, the Committee's reports are submitted to the United Nations General Assembly, through the Economic and Social Council, for its consideration, every two years.

In the spirit of article 44, paragraph 6, it is important that the Concluding Observations are made widely available in the State Party concerned. If it so wishes, the State Party may address any of the observations in the context of any additional information that it provides to the Committee.

C. Procedures for follow-up action

It is assumed that concerns expressed by the Committee in its Concluding Observations will be addressed in a detailed manner by the State Party in its next report. The Committee may mention in its observations some specific issues on which it is particularly interested to receive detailed information. In cases where the Committee has asked for additional information in accordance with article 44, paragraph 4, such information will be on the agenda at a future session.

When the discussion of a State Party report ends with Preliminary Observations by the Committee, the dialogue will continue at a future session. The Preliminary Observations outline the issues to be discussed at the next stage and specify what further information the Committee requests, in advance and in writing.

The Committee may, in accordance with article 45(b), transmit to relevant agencies and bodies, including the Centre for Human Rights, any reports from States Parties containing a request or indicating a need for technical advice or assistance, along with the Committee's observations and suggestions. This refers to needs both in relation to the reporting process and to implementation programmes.

States can request support from the Programme of Advisory Services and Technical Assistance of the Centre for Human Rights. Such requests could concern reviews required for ratification or accession and preparation of the report, as well as training seminars and other activities to make the principles and provisions of the Convention known and incorporated into national legislation and action plans.

The Concluding Observations of the Committee are disseminated to all relevant United Nations bodies and agencies, as well as other competent bodies, and might serve as a basis for discussions on international cooperation. The Committee may also, in its observations, make particular reference to the need for and possibilities of such cooperation.

D. Procedure in relation to overdue reports

The Convention makes reporting in time an obligation in itself. The Committee emphasizes the importance of timely reports.

Records are kept on the submission of reports, specifying which ones are overdue. The Committee issues regular reminders to States.

With such communications, information is also given about the possibility for States to request technical assistance and advisory services from the United Nations Centre for Human Rights.

In a case of persistent non-reporting by a State Party, the Committee may decide to consider the situation in the country in the absence of a report, but on the basis of all available information. The State Party will be notified about such a decision in advance of the event."

(Committee on the Rights of the Child, Report on the seventh session, September/October 1994, CRC/C/34, pp. 70 et seq.*)*

Guidelines for the participation of partners (NGOs and individual experts) in the Pre-sessional Working Group of the Committee on the Rights of the Child

"1. Under article 45(a) of the Convention, the Committee on the Rights of the Child may invite specialized agencies, UNICEF and other competent bodies to provide expert advice on the implementation of the Convention. The term 'other competent bodies' includes non-governmental organizations (NGOs). This Convention is the only international human rights treaty that expressly gives NGOs a role in monitoring its implementation. The Committee has systematically and strongly encouraged NGOs to submit reports, documentation or other information in order to provide it with a comprehensive picture and expertise as to how the Convention is being implemented in a particular country. The Committee warmly welcomes written information from international, regional, national and local organizations. Information may be submitted by individual NGOs or national coalitions or committees of NGOs.

2. In order to rationalize its work, written information provided by national, regional and international NGOs as well as individual experts should be submitted to the secretariat of the Committee on the Rights of the Child at least two months prior to the beginning of the Pre-sessional Working Group concerned. Twenty copies of each document should be provided to the secretariat. NGOs are invited to indicate clearly whether they wish the Committee to keep their information or its source confidential.

3. Requests of national, regional and international NGOs to participate in the Pre-sessional Working Group should be submitted to the Committee through its secretariat at least two months prior to the beginning of the Pre-sessional Working Group concerned.

4. Based on the written information submitted, the Committee will issue a written invitation to selected NGOs to participate in the Pre-sessional Working Group. The Committee will only invite NGOs whose information is particularly relevant to its consideration of the State Party's report. Priority will be given to partners who have submitted information within the requested time-frame, who are working in the State Party and who can provide first-hand information that is complementary to information already available to the Committee. In exceptional cases, the Committee reserves the right to limit the number of partners invited.

5. The Pre-sessional Working Group of the Committee provides a unique opportunity for dialogue with partners, including NGOs, regarding implementation of the Convention on the Rights of the Child by States Parties. Therefore, the Committee strongly recommends that its partners limit their introductory remarks to a maximum of 15 minutes for NGOs coming from in-country and five minutes for others so that the members of the Committee can then engage in a constructive dialogue with all participants. Introductory remarks should be limited to highlights of written submissions.

The Pre-sessional Working Group is a meeting closed to the public, so no observers will be allowed."

(Committee on the Rights of the Child, Report on the twenty-second session, September/October 1999, CRC/C/90, Annex VIII, p. 111)

article 44

Examination of States Parties' reports

As noted under article 43 (page 639), the Committee meets for three sessions a year, in Geneva, Switzerland. The Committee normally devotes two 3-hour periods over one day to the public examination of each initial or periodic report. At the end of each session, the Committee issues Concluding Observations, summarizing its comments and recommendations.

Follow-up meetings

In its early years, the Committee on the Rights of the Child held informal regional meetings – for example for Latin America in 1992 and the South-East Asian region in Bangkok in 1993, organized by UNICEF with support and assistance from the Office of the High Commissioner for Human Rights and other United Nations agencies and bodies. Since 2003, the Office of the High Commissioner for Human Rights, in association with UNICEF and international NGOs, has organized regional and sub-regional workshops concerning implementation of the Concluding Observations of the Committee (see www.ohchr.org/english/bodies/crc/follow-up.htm).

Optional Protocols

At its thirty-ninth session, May/June 2005, the Committee issued a decision on consideration of reports under the two Optional Protocols to the Convention. This welcomed the fact that more than half the Member States of the United Nations have ratified the Protocols. It adopted detailed rules for examination of Initial Reports on the Optional Protocols.

"1. Reports received approximately at the same time as a regular periodic report on the implementation of the Convention on the Rights of the Child will be considered at the session at which this regular periodic report will be examined. Additional separate time will be scheduled for this examination if the State is a party to both Optional Protocols and has submitted approximately at the same time both initial reports.

2. States Parties to both Optional Protocols are encouraged, whenever possible, to submit their initial reports at the same time and preferably not later than the ultimate date at which the initial report is due for the Optional Protocol ratified first. The examination of the two initial reports will be scheduled for a regular session of the Committee.

3. In case the rules mentioned before do not apply, the Committee will apply the following ones:

a) if the State is only a party to the Optional Protocol on the involvement of children in armed conflicts, the initial report to this instrument will be considered at a regular session of the

Committee if the State Party concerned is facing or has recently faced serious difficulties in respecting and implementing the provisions enshrined in the Optional Protocol. For other States Parties, the Committee will offer them a choice of an examination in writing (technical review) or one at a regular session of the Committee which include a dialogue with representatives of the concerned State Party;

b) if the State is only a party to the Optional Protocol on the sale of children, child prostitution and child pornography, the initial report on this instrument will be examined by the Committee at one of its regular sessions.

4. Initial reports submitted under both Optional Protocols will also be included in the agenda of the Committee's Pre-sessional Working Group meetings." (Report on the thirty-ninth session, May/June 2005, CRC/C/150, pp. 4 and 5. For further details of reporting arrangements under the two Optional Protocols, see pages 659 and 669.)

Reports of the Committee

Under article 44(5), the Committee is required to submit reports on its activities to the United Nations General Assembly, through the Economic and Social Council, every two years. The Committee adopts a report after each of its sessions. For details of documentation of the Committee's activities, see page 641.

Making reports under the Convention widely available: article 44(6)

The Committee on the Rights of the Child in its Concluding Observations has invariably urged each State Party to ensure wide availability of Initial Reports and subsequent reports, any additional information submitted to the Committee, the Summary Records of discussions with the Committee and the Committee's Concluding Observations. Paragraph 6 of article 44 requires States Parties to "make their reports widely available to the public in their own countries". The Committee has urged States Parties to ensure translation into appropriate languages and to ensure that reports are the subject of parliamentary debate and consideration by non-governmental organizations.

It provides guidance in its General Comment No. 5 on "General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)":

"If reporting under the Convention is to play the important part it should in the process of implementation at the national level, it needs to be known about by adults and children throughout the State Party. The reporting process provides a unique form of international accountability for how States treat children and their rights. But unless

The NGO Group for the Convention on the Rights of the Child

The NGO Group for the Convention on the Rights of the Child promotes the involvement of non-governmental organizations in the reporting process to the Committee on the Rights of the Child. It is a coalition of more than 60 non-governmental organizations which work together to facilitate the promotion, implementation and monitoring of the Convention on the Rights of the Child. The NGO Group meets regularly in Geneva to coordinate its action and develop joint strategies. There is a Task Force to support the development of NGO children's rights coalitions at national level. The NGO Group has produced a resource guide outlining the reporting process, *A Guide for Non-governmental Organizations Reporting to the Committee on the Rights of the Child (revised 2006).* It is intended to assist NGOs in understanding and using the process to further the implementation of the Convention at national level. The NGO Group can be contacted at:

NGO Group for the Convention on the Rights of the Child
1, rue de Varembé, 1202 Geneva, Switzerland
Phone (41) 22 740 4730; fax (41) 22 740 1145
e-mail: ngocrc-lup@bluewin.ch

NGO reports
Reports submitted to the Committee by NGOs for consideration by the Pre-sessional Working Group are available on-line at www.crin.org unless NGOs have indicated they are confidential.

reports are disseminated and constructively debated at the national level, the process is unlikely to have substantial impact on children's lives.

"The Convention explicitly requires States to make their reports widely available to the public; this should be done when they are submitted to the Committee. Reports should be made genuinely accessible, for example through translation into all languages, into appropriate forms for children and for people with disabilities and so on. The Internet may greatly aid dissemination, and Governments and parliaments are strongly urged to place such reports on their web sites.

"The Committee urges States to make all the other documentation of the examination of their reports under the Convention widely available to promote constructive debate and inform the process of implementation at all levels. In particular, the Committee's Concluding Observations should be disseminated to the public including children and should be the subject of detailed debate in parliament. Independent human rights institutions and NGOs can play a crucial role in helping to ensure widespread debate. The Summary Records of the examination of government representatives by the Committee aid understanding of the process and of the Committee's requirements and should also be made available and discussed." (Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, paras. 71 to 73)

So, for example, it recommended to Tanzania, following examination of its Second Report:

"The Committee recommends that the State Party take all appropriate measures to ensure full implementation of the present recommendations, inter alia*, by transmitting them to the members of the Council of Ministers or the Cabinet or a similar body, the Parliament, and to provincial or state governments and parliaments, when applicable, for appropriate consideration and further action.*

"The Committee further recommends that the second periodic report and written replies submitted by the State Party, and related recommendations (Concluding Observations) it adopted, be made widely available in the languages of the country, including (but not exclusively) through Internet, to the public at large, civil society organizations, youth groups, professional groups, and children, in order to generate debate and awareness of the Convention, its implementation and monitoring." (United Republic of Tanzania CRC/C/TZA/CO/2, paras. 72 and 73)

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• Article 44(6)

Has the State made widely available

- ☐ its Initial Report, and any Periodic Reports?
- ☐ any additional information submitted to the Committee on the Rights of the Child?
- ☐ the Summary Records of discussions of the Initial and Periodic Reports?
- ☐ the Committee's Concluding Observations on the Initial Report and Periodic Reports?

Have these reports

- ☐ been translated and disseminated in national, local, minority or indigenous languages?
- ☐ been debated in Parliament?
- ☐ been the subject of discussion and debate with appropriate non-governmental organizations?

Cooperation with United Nations agencies and other bodies

Text of Article 45

In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

Article 45 sets out arrangements intended to foster effective implementation of the Convention and to encourage international cooperation. It outlines the role for specialized agencies, UNICEF and other United Nations organs; they are entitled to be represented when implementation of aspects of the Convention which come within their mandate are being considered. The Committee can invite these bodies, and "other competent bodies" (interpreted as including appropriate non-governmental organizations) to provide expert advice and to submit reports (article 45(a); a brief guide to the United Nations system is given in Appendix 1, page 680). For details of the involvement of these bodies in the reporting process under the Convention, see article 44, page 643.

Article 45(b) requires the Committee to submit to specialized agencies, UNICEF and "other competent bodies" any reports from States Parties that include a request, or indicate a need, for technical advice or assistance. At its third session the Committee decided that, when appropriate, it would indicate a possible need for technical assistance in its Concluding Observations on States Parties' reports. Where the need for a specific programme of technical advice or assistance is identified, the Committee indicated it would encourage a meeting between the governmental delegation from the State Party and the relevant United Nations or other competent body (Report on the third session, January 1993, CRC/C/16, paras. 139 to 145).

Article 45(c) enables the Committee to recommend that the General Assembly requests the Secretary-General to undertake, on behalf of the Assembly, studies on specific issues relating to the rights of the child. Proposals from the Committee have led to two major studies. In its third session, the Committee recommended a study on children and armed conflict. This led to the comprehensive study on the *Impact of Armed Conflict on Children*, led by Ms Graça Machel (see article 38, page 579). Following its two Days of General Discussion on "Violence against children", in 2000 and 2001, the Committee proposed a comprehensive study on this issue. The report of this study, led by Professor Paulo Sérgio Pinheiro, was submitted to the General Assembly in October 2006 (see article 19, pages 250 and 251).

Article 45(d) entitles the Committee to make suggestions and general recommendations, to be transmitted to any States Parties concerned and reported to the General Assembly, along with any comments from States Parties.

The Committee noted in the report of its second session that it could play the role of catalyst in developing the agenda for research and study on the rights of the child at the international level (Report on the second session, September/October 1992, CRC/C/10, para. 60). Article 4 of the Convention stresses the importance of international cooperation in implementing the Convention, and there are specific references to international cooperation in articles 17(b), 23(4), 24(4) and 28(3). ■

Miscellaneous provisions concerning the Convention

(For full text of these articles, see Appendix 2, pages 690 and 691)

Signature, ratification, accession, coming into force

These articles cover arrangements for signature, ratification and accession to the Convention, and for its coming into force. The Convention comes into force in a State on the thirtieth day following deposit of the State's instrument of ratification or accession. Once in force, the State acquires obligations under international law to respect and ensure the rights contained in the Convention.

Amendments to the Convention

Any State Party may propose an amendment to the Convention, which is filed with the Secretary-General, who sends it to States Parties. If, within four months, at least a third of the States Parties favour a conference to consider and vote on the proposal, the Secretary-General convenes a conference. Any amendment adopted by a majority of States Parties present and voting at the conference is submitted to the General Assembly for approval. Once approved by the General Assembly and accepted by a two-thirds majority of States Parties, the amendment enters into force. It becomes binding on those States Parties which have accepted it. An amendment to increase the number of members of the Committee on the Rights of the Child from 10 to 18 was approved by the General Assembly in its resolution 50/155 of 21 December 1995 and came into force in November 2002.

Reservations

Reservations made by States Parties at the time of ratification or accession are deposited with the Secretary-General, and circulated to all States. Paragraph 2 of article 51 emphasizes that: "A reservation incompatible with the object and purpose of the present Convention shall not be permitted." Reservations can be withdrawn at any time by notification to the Secretary-General, who then informs other States.

Article 2 of the Vienna Convention on the Law of Treaties defines "reservation" as a "unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or

acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State".

Some States make "declarations", which are intended simply to clarify their interpretation of a particular phrase, but if the declaration appears to "exclude or to modify the legal effect of certain provisions" of the Convention, it will be treated as a reservation. In its *Guidelines for Periodic Reports (Revised 2005),* the Committee on the Rights of the Child notes: "States Parties that have entered reservations to the Convention should indicate whether they consider it necessary to maintain them. They should also indicate whether they have plans to limit the effects of reservations and ultimately to withdraw them, and, whenever possible, specify the timetable for doing so." (CRC/C/58/Rev.1, 29 November 2005, para. 10)

Denouncing the Convention

A State Party can denounce the Convention at any time by written notification to the Secretary-General; denunciation becomes effective one year later.

Depositary of the Convention

The Secretary-General is designated as the depositary of the Convention.

Official languages

The original text of the Convention in Arabic, Chinese, English, French, Russian and Spanish – all to be regarded as equally authentic – are deposited with the Secretary-General.

Optional Protocol on the involvement of children in armed conflict

(For full text of Optional Protocol, see page 692 and for Reporting Guidelines, see page 704.)

Summary

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict requires ratifying States to ensure that nobody under the age of 18 is recruited compulsorily (conscripted) into their armed forces and to "take all feasible measures" to ensure that under-18-year-old members of their armed forces do not take a direct part in hostilities. Also, States must take all feasible measures to prevent recruitment and use in hostilities of children under 18 years by armed groups.

Any State that ratifies the Optional Protocol must raise "in years" the minimum age for voluntary recruitment, set at 15 in the Convention. Each State must make a binding declaration establishing a minimum age for voluntary recruitment and describing safeguards adopted to ensure that such recruitment "is not forced or coerced". ■

Background

The Optional Protocol was adopted by the United Nations General Assembly resolution in 2000 and entered into force in 2002. By July 2007, over one hundred countries had ratified or acceded to the Optional Protocol.

During the drafting of the Convention on the Rights of the Child there was concern that article 38 was not consistent with the protection of children offered by the rest of the Convention (for discussion, see article 38, page 574). The proposal for an optional protocol to the Convention arose from the first Day of General Discussion held by the Committee on the Rights of the Child, on "Children in armed conflict" (5 October 1992).

At its third session in January 1993, the Committee agreed to prepare a preliminary draft text of an optional protocol (see Report on the third session, January 1993, CRC/C/16, Annex VII). At its sixth session, in 1994, it welcomed

"... the decision of the Commission on Human Rights to establish an open-ended working group to elaborate as a matter of priority a draft optional protocol to the Convention on the Rights of the Child and to use as a basis for its discussions the preliminary draft submitted by the Committee on the Rights of the Child."
(Report on the sixth (special) session, April 1994, CRC/C/29, p. 4)

The Working Group met between 1994 and 2000. Many States Parties to the Convention and the Committee on the Rights of the Child wished to see the protocol provide protection of all under-18-year-olds from any involvement in hostilities – direct or indirect – and any recruitment into armed forces, whether compulsory or voluntary. It proved impossible to reach consensus on this. The resulting text is a compromise which does improve the protection offered by article 38 of the Convention, but falls short of the clear standards sought by the Committee on the Rights of the Child, many States Parties and many non-governmental organizations concerned with children's rights. (The reports of the Working Group form the *travaux préparatoires* of the Optional Protocol. See, for example, E/CN.4/2000/74.)

Standards of the Convention

Under article 38, States Parties are required to:

- respect and ensure respect for rules of international humanitarian law applicable to them in armed conflicts (principally the four Geneva Conventions and three Additional Protocols);
- take all feasible measures to ensure that under-15-year-olds do not take a direct part in hostilities;
- refrain from recruiting under-15-year-olds into armed forces;
- give priority to the oldest in recruiting any 15- to 18-year-olds;
- take all feasible measures to ensure protection and care of children affected by an armed conflict.

The Committee on the Rights of the Child has emphasized, in the report of its General Day of Discussion on "Children in armed conflict" (see article 38, page 580) and in submissions to the Working Group drafting the optional protocol, that the effects of armed conflict on children should be considered in the framework of all the articles of the Convention; that States should take measures to ensure the realization of the rights of all children in their jurisdiction in times of armed conflict; and that the principles of the Convention are not subject to derogation in times of armed conflict. It has stressed that it believes, in the light of the definition of the child and the principle of the best interests of the child, that no child under the age of 18 should be allowed to be involved in hostilities, either directly or indirectly, and that no child under 18 should be recruited into armed forces, either through conscription or voluntary enlistment.

Provisions of the Optional Protocol

It is clear from the Preamble and other provisions that implementation of the Optional Protocol must be conducted in the light of the Convention on the Rights of the Child.

Recruitment. Article 1 requires States Parties to the Optional Protocol to "take all feasible measures" to ensure that members of their armed forces who have not attained the age of 18 do not take a direct part in hostilities.

During drafting there was pressure to remove the word "direct", and the Committee's *Guidelines* asks States to provide their legal definition of the word. The United States of America included its definition in the mandatory declaration accompanying ratification:

"... the phrase "direct part in hostilities" (i) means immediate and actual action on the battlefield likely to cause harm to the enemy because there is a direct causal relationship between the activity engaged in and the harm done to the enemy;

and (ii) does not mean indirect participation in hostilities, such as gathering and transmitting military information, transporting weapons, munitions, or other supplies, or forward deployment." The Declaration also noted that any decision about assignment of military personnel "shall only be judged on the basis of all the relevant circumstances and on the basis of that person's assessment of the information reasonably available to the person at the time the person planned, authorized, or executed the action under review, and shall not be judged on the basis of information that comes to light after the action under review was taken." (United Nations treaties, chapter IV, Human Rights, 11.b.)

Relevant to this last point, the Committee has recommended in its Concluding Observations that States ensure that their law stipulates explicitly that

"… military personnel should not undertake any act that violates the rights enshrined in the Optional Protocol regardless of any military order to that effect." *(Kazakhstan CRC/C/OPAC/KAZ/CO/1, para. 7)*

Article 2 of the Optional Protocol requires States to ensure that under-18-year-olds are not compulsorily recruited into their armed forces. Article 3 requires States to raise the minimum age for voluntary recruitment into their national armed forces "in years" from that set out in article 38 of the Convention (that is to say, States should refrain from recruiting any person who has not attained the age of 15, and in recruiting 15- to 18-year-olds, to endeavour to give priority to the oldest). Thus the requirement to raise "in years" means that 16 is the minimum recruitment age for any ratifying State.

When a State ratifies or accedes to the Optional Protocol, it must deposit a binding declaration stating the age at which it permits voluntary recruitment and describing safeguards adopted "to ensure that such recruitment is not forced or coerced," that the child and parents give informed consent, and that adequate proof of age is provided. A State can strengthen its declaration at any time by notifying the Secretary-General. The box on page 662 sets out the States that have ratified or acceded to the Optional Protocol (as at July 2007) and lists the minimum age for recruitment (compulsory or otherwise), as set out in the State's declaration.

Article 3 of the Optional Protocol also requires States to take account of the other principles contained in article 38 of the Convention and to recognize "that under the Convention persons under 18 are entitled to special protection". This last requirement emphasizes that the Optional Protocol needs to be interpreted in the light of the Convention and in particular the general principles identified by the Committee on the Rights of the Child of non-discrimination (article 2), best interests of the child (article 3), right to life and maximum survival and development (article 6) and respect for children's views (article 12).

The safeguards for non-coercive recruitment must ensure as a minimum that:

- recruitment is genuinely voluntary;
- recruitment is done with the informed consent of parents or legal guardians;
- child and parents are fully informed of the duties involved in such military service;
- reliable proof of age is provided prior to acceptance into national military service.

In the small number of countries that had their Initial Reports on the Optional Protocol examined by the Committee by the end of 2006, the issue of minimum age for recruitment had priority attention. Many of the declarations assert that 18 is the State's minimum age for either recruitment or conscription, thereby apparently conforming to the Committee's recommendations and the goal of a wide coalition of NGOs campaigning on this issue.

However, even the small number of Concluding Observations made by the Committee reveal difficulties with States who appear to comply with the "straight 18" position (no recruitment, no conscription and no participation in hostilities by under-18s). For example, it raised the following concern with New Zealand:

"The Committee welcomes the amendment to the Defence Act (1990) which prohibits anyone under 18 from being liable for active service. However, it is concerned that the Defence Force Orders for Administration (15 February 2002) refer only to active service outside New Zealand and therefore implicitly allows active service inside New Zealand by soldiers below the age of 18." *(New Zealand CRC/C/OPAC/CO/1, para. 4)*

As regards countries that have set lower minimum age limits for recruitment, the Committee naturally recommends these be raised, as well as scrutinizing the safeguards against any form of coercion. For example, its Concluding Observations on Bangladesh's Initial Report (which declared a recruitment age of 16) included:

"The Committee is concerned that:
(a) Considering the serious constraints of the birth registration system identified by the

States that have ratified or acceded to the Optional Protocol (by July 2007):

Declaration as to minimum age for recruitment

Afghanistan	22
Andorra	no armed forces
Argentina	18
Armenia	18
Australia	17
Austria	17
Azerbaijan	17
Bahrain	18
Bangladesh	16
Belarus	18
Belgium	18
Belize	16
Benin	18
Bolivia	17
Bosnia and Herzegovina	18
Botswana	18
Brazil	16
Bulgaria	18
Burkina Faso	18
Cambodia	18
Canada	16
Cape Verde	17
Chad	18
Chile	16
Colombia	18
Costa Rica	no armed forces
Croatia	18
Cuba	17
Czech Republic	18
DR of the Congo	18
Denmark	18
Dominica	18
Ecuador	18
Egypt	16
El Salvador	16
Eritrea	18
Finland	18
France	17
Germany	17
Greece	18
Guatemala	-
Holy See	18
Honduras	18
Iceland	no armed forces
India	16
Ireland	17
Israel	17
Italy	17
Jamaica	18
Japan	18
Jordan	16
Kazakhstan	19
Kenya	18
Kuwait	18
Kyrgyzstan	18
Lao PDR	18
Latvia	18
Lesotho	18
Libyan Arab Jamahiriya	18
Liechtenstein	no armed forces
Lithuania	18
Luxembourg	17
Madagascar	18
Maldives	18
Mali	18
Malta	17
Mexico	-
Moldova	18
Monaco	21
Mongolia	18
Montenegro	18
Morocco	18
Mozambique	18
Namibia	18
Nepal	18
New Zealand	17
Nicaragua	18
Norway	18
Oman	18
Panama	16
Paraguay	18
Peru	18
Philippines	18
Poland	17
Portugal	18
Qatar	18
Republic of Korea	18
Romania	18
Rwanda	18
Senegal	20
Serbia	18
Sierra Leone	18
Slovakia	18
Slovenia	18
Spain	18
Sri Lanka	18
Sudan	18
Sweden	18
Switzerland	18
Syrian Arab Republic	18
Tajikistan	18
Thailand	18
TFYR Macedonia	18
Timor-Leste	18
Togo	18
Tunisia	18
Turkey	19
Turkmenistan	17
Uganda	19
Ukraine	19
United Kingdom	16
United Republic of Tanzania	18
United States of America	17
Uruguay	18
Venezuela	18
Viet Nam	18
Yemen	18

Committee on the Rights of the Child during the consideration of the second periodic report in 2003, it might be very difficult in many cases to determine the real age of the recruits;
(b) The consent of parents or legal guardians is not mandatory for the recruitment of under-18s, except for recruitment in the Air Force;
(c) There are no measures to ensure that recruitment of under-18s is genuinely voluntary and well informed;
(d) There are a reported high number of children under 18 who enrol in armed forces.
"The Committee, while reminding the State Party of the need to register all children at birth… recommends that the State Party develop and strengthen measures effectively to guarantee:
(a) That no child under 16 years be enrolled in the army or in the police forces, by establishing and systematically implementing safeguards to verify the age of volunteers, based on objective elements such as birth certificate, school diplomas and in the absence of documents, medical examination to determine the exact age of the child;
(b) That recruitment of children under 18 years is genuinely voluntary, based on an informed decision and only occurs with prior consent of the parents or legal guardians;
(c) That as few children as possible under 18 are enlisted." *(Bangladesh CRC/C/OPAC/BGD/CO/1, paras. 15 and 16)*

Military schools. The only exception to the requirement to raise the recruitment age is that it does not apply to schools "operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child". Article 28 requires school discipline to be administered in a manner consistent with the child's human dignity and in conformity with the Convention and article 29 sets out in detail aims for education (see pages 428 and 437).

A number of the States' mandatory declarations point out that, although recruitment to the armed forces is set at 18, children are enrolled in military schools at an earlier age.

In Concluding Observations on reports under the Optional Protocol the Committee has raised concerns about the running and curriculum of these schools. For example:

"The Committee is concerned about the possible military training that children in unregistered 'madrassas', also known as 'qaumi madrassas', undergo from a very young age." *(Bangladesh CRC/C/OPAC/BGD/CO/1, para. 17)*

"In the light of the information that students of military schools do receive, in addition to the regular school curriculum, specific training on military issues, including special physical training and arms instruction, the Committee is concerned at the lack of independent mechanisms to deal with possible complaints by the students.
"The Committee recommends that children attending military schools have adequate access to independent complaints and investigation mechanisms." *(Kazakhstan CRC/C/OPAC/KAZ/CO/1, paras. 14 and 15)*

In addition, the Committee expresses concern where it appears that these schools may apply a form of coercion regarding recruitment, as for example with Italy:

"The Committee notes the existence of three military schools, in Milan, Naples and Venice, combining secondary education with military training for students between 15 and 17 years old.
The Committee is concerned that when students reach the age of 16 years, they must apply for a voluntary recruitment of three years to be allowed to complete their studies, failing which they will be dismissed from military school." *(Italy CRC/C/OPAC/ITA/CO/1, para. 15)*

Some armies do not maintain military schools, as such, but rather support junior military forces in ordinary schools. The Committee, for example, wanted to know more about New Zealand's 'cadet forces':

"With regard to incentives for recruitment, and in the light of the fact that a significant proportion of new recruits in the armed forces come from the cadet forces, the Committee requests the State Party, in its next report, to include information on the cadet forces, in particular on how the activities of the cadet forces fit with the aims of education, as recognized in article 29 of the Convention and in General Comment No. 1 of the Committee, and on recruitment activities undertaken by the armed forces within the cadet forces." *(New Zealand CRC/C/OPAC/NZL/1, para. 8)*

Criminalizing the use of child soldiers

Article 4 addresses armed groups that are distinct from the armed forces of the State: they should not "under any circumstances, recruit or use in hostilities persons under the age of 18". States must take all feasible measures to prevent this, including legal measures to prohibit and criminalize such practices (the article notes that its application does not affect the legal status of any party to an armed conflict).

The fact that the ratifying State does not maintain an army does not preclude the need for these laws, as the Committee pointed out to Andorra:

"... The absence of armed forces does not however exclude the possibility of individuals or groups undertaking efforts to recruit children for foreign armed forces or groups and the Committee is concerned that the recruitment of children is not explicitly mentioned as a crime in the State Party's criminal code." (Andorra CRC/C/OPAC/AND/CO/1, para. 6)

And the Committee identifies as a loophole the fact that the legal measures of a number of States do not provide for extraterritorial offences, either by its citizens recruiting children abroad or because children of the State have been recruited abroad. For example, it raised with Kazakhstan and Viet Nam:

"The Committee notes that article 162 of the Criminal Code makes the recruitment and use of mercenaries a crime and that article 7 of the Criminal Code provides for certain extraterritorial jurisdiction. However, the Committee is concerned that there is no specific provision criminalizing the recruitment of children below the age of 18, nor a specific provision providing extraterritorial jurisdiction in case of recruitment of a Kazakh child outside the country or recruitment of children by a Kazakh citizen outside Kazakhstan." (Kazakhstan CRC/C/OPAC/KAZ/CO/1, para. 6)

"The Committee notes that there are provisions in the State Party's Criminal Code which would permit Vietnamese courts to exercise jurisdiction over crimes committed outside the territory of Viet Nam when the conduct would violate national law in situations provided for in the international treaties which the State Party has ratified or acceded to. However, it is not clear whether Vietnamese law:
(a) Criminalizes the compulsory recruitment or involving in hostilities of a person under 18 or any other violation of the provisions contained in the Optional Protocol;
(b) Allows for the exercise of the courts' jurisdiction if these acts were committed outside Viet Nam by or against a Vietnamese citizen." (Viet Nam CRC/C/OPSC/VNM/CO/1, para. 5)

Article 5, reflecting article 41 of the Convention, notes that nothing in the Optional Protocol shall be construed as precluding provisions in domestic or international law which are "more conducive to the realization of the rights of the child".

Rehabilitation and prevention

Article 6 provides general implementation duties: States Parties must take "all necessary legal, administrative and other measures" to ensure effective implementation and enforcement. Reflecting article 42 of the Convention, States undertake to make the principles and provisions of the Optional Protocol "widely known and promoted by appropriate means, to adults and children alike". The last paragraph of the Preamble to the Optional Protocol notes that States Parties encourage "the participation of the community and in particular children and child victims in the dissemination of information and education programmes concerning the implementation of the Protocol". The third paragraph of article 6 requires States to take all feasible measures to ensure that persons recruited or used in hostilities contrary to the Optional Protocol are "demobilized or otherwise released from service." Reflecting article 39 of the Convention, such persons must receive, when necessary, all appropriate assistance for their physical and psychological recovery and social reintegration.

Many rich countries, including those whose laws fully comply with the Optional Protocol and who rarely use their armed forces, are likely to receive a number of refugees from armed conflict, including former child soldiers. The Committee has sometimes expressed frustration with the limited information on the assistance these children are given by the State. For example it put the following request to Finland:

"The Committee invites the State Party to provide information in its next Periodic Report on refugee and migrant children within its jurisdiction who may have been involved in hostilities in their country of origin and on the assistance provided, if any, for their physical and psychological recovery and social reintegration. Furthermore, the State Party is also invited to provide additional information on technical cooperation and financial assistance projects aimed at preventing the involvement of children in armed conflicts as well as assisting the recovery of child victims of armed conflict." (Finland CRC/C/OPAC/FIN/CO/1, paras. 4 and 5)

The Committee also considers state involvement in the arms trade, and specifically whether arms are sold to countries where child soldiers are used. For example, it commended Switzerland's code of practice:

"The Committee notes with appreciation that the State Party's authorization of foreign trade in war material follows certain criteria (Ordonnance du 25 février 1998 sur le matériel de guerre, Etat 12 mars 2002) and pays particular attention to the use of children as soldiers in the receiving country." (Switzerland CRC/C/OPAC/CHE/CO/1, para. 5)

And it raised concerns about the trade provisions of Belgium, Canada and Bangladesh:

"While noting with appreciation the State Party's efforts to work towards the prohibition

of light weapons usable by child soldiers at the international level, for example, by banning the trade of war materiel to countries 'where it has been established that child soldiers are aligned with the regular army' (based on the 2003 amendment to the law on small arms trade), the Committee is concerned that this provision applies only to child soldiers under the age of 16. As regards the international trade in small arms and light weapons, the Committee notes that the manufacture and exportation of these weapons occurs within the State Party.
"The Committee recommends that the State Party review its domestic law on small arms trade with a view to abolishing a trade on war materiel with countries where persons who have not attained the age of 18 take a direct part in hostilities as members of their armed forces or armed groups that are distinct from the armed forces of a State. In this respect, the Committee invites the State Party to indicate, in its next report, the number of sales that were halted as a result of the implementation of the amended law on small arms trade." (Belgium CRC/C/OPAC/BEL/CO/1, paras. 20 and 21)

"The Committee, while noting initiatives taken to monitor the trafficking of small arms and light weapons, is concerned by their proliferation in the State Party and by the high proportion of children carrying them.
"The Committee recommends that the State Party take all necessary measures to ensure that children do not have access to small arms and/or light weapons and that those already in possession of weapons be disarmed. It further recommends that measures taken to prevent arms trafficking include a child rights perspective." (Bangladesh CRC/C/OPAC/BGD/CO/1, paras. 20 and 21)

"The Committee recommends that the State Party ensure that its domestic legislation and practice prohibit in any case the trade of small arms and light weapons to countries where persons who have not attained the age of 18 may take a direct part in hostilities as members of their armed forces or armed groups that are distinct from the armed forces of a State. The Committee also invites the State Party to provide specific information on this issue in its next report." (Canada CRC/C/OPAC/CAN/CO/1, paras. 14 and 15)

International cooperation in implementing the Optional Protocol is required by article 7, including through technical cooperation and financial assistance. The remaining articles set out arrangements for reporting and for ratification, accession and denunciation, coming into force and for amending the Optional Protocol (see full text in Appendix 2, page 692).

Reporting obligations under the Optional Protocol

States Parties to the Optional Protocol must submit to the Committee on the Rights of the Child an Initial Report within two years, "providing comprehensive information on the measures it has taken to implement the provisions of the Optional Protocol, including the measures taken to implement the provisions on participation and recruitment" (article 8).

The Committee adopted reporting guidelines for Initial Reports under the Optional Protocol in October 2001 (for text, see Appendix 3, page 704). Thereafter, States Parties shall include any further information on implementation of the Optional Protocol in the reports they submit every five years to the Committee under the Convention on the Rights of the Child. The Committee may request further information. Article 8 also notes that "Other States Parties to the Protocol shall submit a report every five years". Article 9 notes that the Optional Protocol is open to ratification or accession "by any State"; thus States which are not States Parties to the Convention on the Rights of the Child may become States Parties to the Optional Protocol. (Of the two States yet to ratify the Convention on the Rights of the Child, Somalia has signed but not yet ratified the Optional Protocol; the United States of America has ratified it.)

In its thirty-ninth session, in June 2005, the Committee adopted the following rule:

"... If the State is only a party to the Optional Protocol on the involvement of children in armed conflicts, the Initial Report to this instrument will be considered at a regular session of the Committee if the State Party concerned is facing or has recently faced serious difficulties in respecting and implementing the provisions enshrined in the Optional Protocol. For other States Parties, the Committee will offer them a choice of an examination in writing (technical review) or one at a regular session of the Committee which include a dialogue with representatives of the concerned State Party." (Committee on the Rights of the Child, Report on the thirty-ninth session, May/June 2005, CRC/C/150, pp. 4 and 5)

Of the States examined before the end of 2006, Belgium, Canada and the Czech Republic opted for the technical review, without dialogue with the Committee.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to the Optional Protocol, including

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (the Optional Protocol is relevant to **departments of defence, foreign affairs, home affairs, education, social welfare**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the Optional Protocol, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

- ☐ which includes where necessary the identification of goals and indicators of progress?
- ☐ which does not affect any provisions which are more conducive to the rights of the child?
- ☐ which recognizes other relevant international standards?

which involves where necessary international cooperation in line with article 7 of the Optional Protocol?

(Such measures may be part of an overall governmental strategy for implementing the Convention and the Optional Protocol).

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of the Optional Protocol widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to the Optional Protocol likely to include training for **all members of armed forces, including peacekeeping forces, social workers, aid workers, psychologists and health workers**)?

• Specific issues in implementing Optional Protocol

- ☐ Does the State ensure that under-18s who are members of its armed forces do not take a direct part in hostilities?
- ☐ Does the State ensure that under-18s are not compulsorily recruited into its armed forces?
- ☐ Has the State raised in years the age for voluntary recruitment into its national armed forces, from that set out in article 38 of the Convention?

How to use the checklist, *see page XIX*

- ☐ Has the State deposited a binding declaration setting out the minimum age for voluntary recruitment and describing safeguards adopted to ensure that such recruitment is not forced or coerced?

Do these safeguards ensure, as a minimum that

  - ☐ recruitment is genuinely voluntary;
  - ☐ recruitment is done with the informed consent of the child's parents or legal guardians;
  - ☐ those involved are fully informed of the duties involves in such military service;
  - ☐ those involved provide reliable proof of age prior to acceptance.

- ☐ Does the State keep under review the age for voluntary recruitment, with a view to raising it further in years?
- ☐ Does the State take all feasible measures to prevent recruitment or use in hostilities of under-18s by other armed groups?
- ☐ Has the State adopted legal measures to prohibit and criminalize such practices by other armed groups?
- ☐ Has the State sought to establish extraterritorial jurisdiction for these crimes when they are committed by or against a person who is a citizen of or has other links with the State?
- ☐ Does the State ensure that any children in their jurisdiction recruited or used in hostilities in ways contrary to the Optional Protocol are demobilized or otherwise released from service?
- ☐ Does the State ensure that such children receive when necessary all appropriate assistance for their physical and psychological recovery and social reintegration?

Reminder: **The Optional Protocol should not be considered in isolation from the Convention on the Rights of the Child. The Convention is indivisible and its articles are interdependent.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in jurisdiction without discrimination on any ground

Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children

Article 6: right to life and maximum possible survival and development

Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

How to use the checklist, *see page XIX*

Closely related articles in the Convention

Articles whose implementation is particularly related to that of the Optional Protocol include:

Article 19: protection from all forms of violence
Article 22: refugee children
Article 28: right to education
Article 29: aims of education
Article 34: protection from sexual exploitation
Article 35: abduction and trafficking
Article 37: protection from torture, cruel inhuman or degrading treatment or punishment
Article 38: armed conflict
Article 39: rehabilitative care for victims of armed conflict

Optional Protocol on the sale of children, child prostitution and child pornography

(For full text of Optional Protocol, see page 695 and for Reporting Guidelines, see page 707.)

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography defines what is meant by these terms and requires ratifying States to take all possible measures to criminalize them as offences and to prosecute offenders domestically; overseas prosecution of nationals is discretionary. It also requires that the children concerned be treated humanely, with a view to their social rehabilitation.

Unlike the Optional Protocol on the involvement of children in armed conflict, the proposal for an optional protocol on child sexual exploitation was not actively supported by the Committee on the Rights of the Child. It was felt that the issues were already addressed within the Convention, that they should not be seen in isolation but holistically within the broad range of children's human rights, and that energies should rather be put into strengthening the implementation of existing rights than into the creation of new instruments. Nonetheless the desire for more detailed state responsibilities to tackle these forms of child abuse, particularly as regards the prosecution and extradition of "sex tourists", ultimately ensured the Optional Protocol's adoption. ■

Summary

Background

Action to tackle commercial sexual exploitation of children started in the 1990s and is described in relation to article 34 (page 513). In that year, the Special Rapporteur on the sale of children, child prostitution and child pornography was appointed to review international and national developments and make detailed recommendations.

In 1992, the Commission on Human Rights adopted Programmes of Action on this subject, making recommendations for greater public awareness and social support for "child victims", or "survivors", the term preferred by many NGOs, as well as for legislative reform. Forms of cooperation between law enforcement agencies on cross-border trafficking were encouraged together with the establishment of special intergovernmental task forces to promote measures in alliance with appropriate non-governmental organizations (Commission on Human Rights resolution 1992/74, 5 March 1992). In 1994 the Commission on Human Rights established an open-ended working group to prepare guidelines for a possible protocol on the sale of children and their commercial sexual exploitation. As mentioned above, the proposal for an optional protocol on these issues did not have particularly enthusiastic support from either the Committee or many of the organizations working to prevent the sexual exploitation of children (for example, see Report on the eleventh session, January 1996, CRC/C/50).

The Optional Protocol was adopted by the United Nations General Assembly resolution 54/263 on 25 May 2000. It entered into force on 18 January 2002, three months after the deposit of the tenth instrument of ratification or accession (article 14).

The Optional Protocol contains a number of proposals made at the 1996 First World Congress against Commercial Sexual Exploitation of Children, held in Stockholm (Sweden). This produced a detailed Declaration and Agenda for Action rooted in the Convention that urged States to prepare national agendas with set goals and a time frame for implementation by the year 2000. In particular, the Congress focused on the issue of sex tourism, calling for extraterritorial criminal laws.

The ILO Worst Forms of Child Labour Convention (No.182) was adopted in 1999. The "worst forms of child labour" includes all activities which involve the sale of children, child prostitution and child pornography. Also developed in parallel to the Optional Protocol was the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. This was also adopted by the United Nations General Assembly in 2000. (For full text, see Appendix 4, page 761.)

Ratification and reporting

Since adoption the Optional Protocol has had, by July 2007, over 100 ratifications or accessions (see box). A number of States have entered declarations and reservations. The declarations are mainly legal clarifications, some with the intention to increase the protection of children – for example, not to limit "sale of children" only to the definitions in article 2 and article 3 – or to define civil freedoms or make clear that adoption is not recognized by their State (see page 294 for discussion on this type of reservation). In the view of the Committee, the more serious reservations relate to extradition (see discussion of article 5 below). In addition, Oman and Qatar state that they will only implement those aspects of the Optional Protocol that are compliant with Islamic law. Other States have lodged formal objections to these, on the grounds that such a reservation effectively casts doubts on the commitment of the State to the treaty. The Committee was informed by Qatar that it intended to review this reservation (Qatar CRC/C/OPSC/QAT/CO/1, para. 9).

In 2005 States began to submit their Initial Reports to the Committee and at the end of 2006 the Committee revised its *Guidelines* for reporting because it wished to assist States to have a better understanding of the information needed to assess progress (see page 707). The revised guidelines are longer than the guidelines for reporting on the Convention as a whole. They require States to submit a mass of information on all aspects of the Optional Protocol, some of which is also relevant to implementation of the Convention (for example the information on adoption regulation is also useful for assessing implementation of article 21, the information about asylum-seeking children for assessing article 22, etc.). States that follow these guidelines will achieve a sharp focus on the protection they offer to children whose rights have been violated by sexual and commercial exploitation.

The Committee's Concluding Observations on reports under the Optional Protocol follow a similar pattern to reports under the Convention, in that the Committee starts with general measures of implementation (coordination and evaluation; national plan of action; dissemination and training; data collection; budget allocation, and independent monitoring). This is followed by an examination of the States' legal measures to prohibit the sale of children, child pornography and prostitution; the third section is devoted to the protection of the rights and interests of child

States that have ratified or acceded to the Optional Protocol on the sale of children, child prostitution and child pornography (as at July 2007)

Afghanistan
Algeria
Andorra
Angola
Antigua and Barbuda
Argentina
Armenia
Australia
Austria
Azerbaijan
Bahrain
Bangladesh
Belarus
Belgium
Belize
Benin
Bolivia
Bosnia and Herzegovina
Botswana
Brazil
Brunei Darussalam
Bulgaria
Burkina Faso
Cambodia
Canada
Cape Verde
Chad
Chile
China
Colombia
Comoros
Costa Rica
Croatia
Cuba
Cyprus
DR Congo
Denmark
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Equatorial Guinea
Eritrea
Estonia
France
Georgia
Guatemala
Holy See
Honduras
Iceland
India
Italy
Japan
Jordan
Kazakhstan
Kuwait
Kyrgyzstan
Lao PDR
Latvia
Lebanon
Lesotho
Libyan Arab Jamahiriya
Lithuania
Madagascar
Maldives
Mali
Mauritania
Mexico
Moldova
Mongolia
Montenegro
Morocco
Mozambique
Namibia
Nepal
Netherlands
Nicaragua
Niger
Norway
Oman
Panama
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Republic of Korea
Romania
Rwanda
Saint Vincent and the Grenadines
Senegal
Serbia
Sierra Leone
Slovakia
Slovenia
South Africa
Spain
Sri Lanka
Sudan
Sweden
Switzerland
Syrian Arab Republic
Tajikistan
Thailand
TFYR Macedonia
Timor-Leste
Togo
Tunisia
Turkey
Turkmenistan
Uganda
Ukraine
United Republic of Tanzania
United States of America
Uruguay
Vanuatu
Venezuela
Viet Nam
Yemen

victims; the fourth to measures to prevent the production and dissemination of materials; the fifth to international cooperation, and the sixth examines the States' measures for training, follow-up and dissemination.

Provisions of the Optional Protocol

Article 1 requires prohibition of the sale of children, child prostitution and child pornography. Article 2 defines what is meant by these terms. As regards the definition of "pornography", Sweden and other countries lodged declarations that the words "any representation" should be taken only to mean "visual representation" (so, for example, written descriptions of child sex would not be included). Article 3 provides further detail – for example that the sale of children includes such things as transfer of children's organs, their forced labour or improperly inducing parental consent to a child's adoption. One

of the United States of America's reservations was that "transfer of organs for profit" would not include any situation where the child had given lawful consent, which arguably misses the point of this provision. The Optional Protocol requires that all these activities are criminalized (including criminalizing "legal persons", i.e., organizations such as film or publishing companies), whether committed domestically or transnationally, and supported by appropriate penalties and state measures to secure enforcement.

The Committee carefully checks that the laws of reporting States give children full protection, for example expressing concern to Kazakhstan and the Syrian Arab Republic:

"... the Committee is concerned that the national legal framework does not incorporate all elements of articles 2 and 3 of the Protocol:
(a) Article 133 of the Criminal Code does not cover sufficiently the sale of children for the purpose of forced labour (art. 3(1)(a)(i)(c) OP);
(b) Article 270 of the Criminal Code regarding recruitment for prostitution mentions specific methods of this recruitment but does not make punishable the recruitment of a child for prostitution regardless of the methods used;
(c) Article 273 of the Criminal Code does not explicitly prohibit possession of child pornography (art. 3(1)(ii)(c));
(d) Legal persons cannot be liable for crimes under the Optional Protocol;
(e) Legal provisions with regard to adoption need strengthening by adherence to international standards and establishment of a central regulating authority." (Kazakhstan CRC/C/OPSC/KAZ/CO/1, para. 15)

"... there are no specific provisions expressly targeting sale of children and child pornography, although these offences would reportedly be covered by other existing provisions; the age limit in the Penal Code is apparently not set at 18 years for all the offences covered by the Optional Protocol." (Syrian Arab Republic CRC/C/OPSC/SYR/CO/1, para. 18(a) and (b))

The Committee was also unhappy about Viet Nam's legal provision on compensation to the victim, not because it was opposed to reparation, but because it appeared to offer a means for the perpetrator to buy a lighter sentence:

"The Committee is concerned that... the Penal Code provides that the author of a crime, including crimes covered by the Optional Protocol, may obtain a reduction of the sentence if he/she makes an offer of compensation which is accepted by the child victims or their families.
"The Committee recommends that the State Party... reconsider... the Penal Code in order to make a clear distinction between the sanction that can be imposed on the perpetrator and the reparation which can be claimed by the victim..." (Viet Nam CRC/C/OPSC/VNM/CO/1, paras. 10 and 11)

The final paragraph of article 3 requires States to take measures to ensure compliance with international adoption instruments. The main multilateral instrument is the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, but of course this does not help in countries where the Hague Convention has not been ratified. However the definition of "sale of children" in article 2 should ensure that any aspect of adoption undertaken for profit is criminalized. The Committee, for example, raised concerns about adoption profiteering with Viet Nam, notwithstanding the fact that it had not yet ratified the Hague Convention:

"The Committee... is concerned about a legal vacuum in the legislation in the area of adoption which would impede the prosecution and punishment of persons acting as intermediary for the adoption of a child in violation of applicable international legal instruments, in accordance with article 3(1)(a)(ii) of the Optional Protocol.
"The Committee recommends that the State Party take all appropriate measures, including amendments in its legislation, to ensure that all persons involved in the adoption of a child, including the intermediary, act in conformity with applicable international legal instruments and that, especially in intercountry adoption, the placement does not result in improper financial gain for those involved in it. The Committee further recommends that the State Party complete the process to become a party to the 1993 Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption." (Viet Nam CRC/C/OPSC/VNM/CO/1, paras. 25 and 26)

Article 4 is concerned with the extent of jurisdiction over these criminal offences. The State must criminalize such offences that are committed within its own territory and must also prosecute if it declines to extradite a foreign national alleged to have committed such an offence. It may also extend jurisdiction to cover offences which are either committed abroad by one of its citizens (or habitual residents), or committed upon one of its citizens when abroad. The Committee is concerned when States only take action when there is "double criminality" (so that the offence is recognized by both countries) as, for example, it found in Iceland and Qatar:

"The Committee notes with concern the principle of 'double criminality' in article 5 of the General Penal Code, which requires that a

person who has committed a serious or lesser offence abroad can be punished in Iceland only if the act is punishable under the law of the country in which it was committed. The Committee is concerned that this requirement limits the possibility of the prosecution of offences outlined in articles 1, 2 and 3 of the Optional Protocol, and therefore limits the protection of children against these crimes."
(Iceland CRC/C/OPSC/ISL/CO/1, para. 15)

Article 5 concerns extradition. The offences covered by this Protocol must be included in all extradition treaties, and in the absence of a specific treaty States may use the Optional Protocol as the legal basis for making an extradition. If extradition is refused the ratifying State must try to get the alleged offender prosecuted in the State in which the offence was committed. Three States (El Salvador, Lao People's Democratic Republic and Viet Nam) have entered specific reservations to this article, and the Committee has expressed concern about other States' failure to implement its provisions. In particular it objects to States limiting extradition only to those States who agree reciprocal measures:

"The Committee notes with concern that extradition is made only upon existence of a bilateral agreement and on the basis of reciprocity.
"The Committee recommends that the State Party amend its legislation by making extradition possible, using the present Optional Protocol as a legal basis for extradition in respect of such offences."
(Qatar CRC/C/OPSC/QAT/CO/1, paras. 25 and 26)

Article 6 requires the maximum degree of cooperation with other States in the prosecution of offenders. Article 7 requires seizure of goods and proceeds and closure of any premises relating to the commission of these offences.

Article 8 addresses the need to protect the child victims or survivors concerned. It states that their best interests must be "a primary consideration" of the criminal justice system and that specialist training must be provided for those who work with child victims. Without prejudicing defendants' right to a fair hearing, the criminal justice system must also help child victims by:

- adapting procedures which recognize their vulnerability and special needs (for example, by the use of video evidence) and providing appropriate support services;
- keeping them fully informed about the case and of their rights;
- allowing their views, needs and concerns to be considered in any proceedings which affect their personal interests (for example, by deciding not to prosecute);
- protecting their identity and privacy;
- providing any necessary protection to them and to their relatives;
- avoiding unnecessary delay in the execution of cases and remedies.

The State must also provide necessary safeguards for people and organizations that work with child victims. Article 8 also requires that any uncertainty over the age of the child should not prevent the initiation of criminal investigations.

In 2005 a resolution of the United Nations Economic and Social Council adopted the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (resolution 2005/20). These Guidelines, which were proposed by the International Bureau for Children's Rights, detail what measures are needed to secure the following rights for child victims and witnesses:

- to be treated with dignity and compassion
- to be protected from discrimination
- to be informed
- to be heard and to express views and concerns
- to effective assistance
- to privacy
- to be protected from hardship during the justice process
- to safety
- to reparation, and
- to special preventive measures.

Article 8 does not contain an explicit provision for the decriminalization of child victims – for example giving child prostitutes immunity from prosecution. This is a controversial issue: proponents for non-criminalization argue that children engaged in prostitution should be treated as child abuse victims; others argue that de-criminalizing child prostitution may encourage the deliberate exploitation of minors, and that older children, over the legal ages of consent and criminal responsibility, should have the same liability as adults.

The Committee, however, always recommends that all children under the age of 18 should be protected under this Optional Protocol, including those whose age is unknown but who appear to be under 18 and expresses concern at any criminalization, stigmatization or insensitive treatment of child victims:

"The Committee is concerned about the information that child victims of crimes covered by the Optional Protocol are often stigmatized and socially marginalized and may be held responsible, tried and placed in centres for the deprivation of liberty." (Morocco CRC/C/OPSC/MAR/CO/1, para. 23)

"The Committee notes that protection measures are contained in the Juvenile Delinquent Act, including the establishment of special courts for juveniles, but is concerned that they refer essentially to children accused and/or convicted of a crime rather than to children victims thereto. It is further concerned that:
(a) under the Evidence Act persons under the age of 18 are not competent to testify, except in case of alleged rape or offences against morality;
(b) victims of acts covered by the Optional Protocol, notably children used for prostitution, may be prosecuted and – if foreign nationals – expelled.
"The Committee recommends that the State Party take all necessary measures to ensure that child victims of any of the crimes under the Optional Protocol are as such neither criminalized nor penalized. It further recommends that the State Party protect child victims and witnesses at all stages of the criminal justice process in accordance with article 8 of the Optional Protocol. To this end, the State Party should also be guided by the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Resolution No. 2005/20). The State Party should in particular:
(a) allow the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected;
(b) use child-sensitive procedures to protect children from hardship during the justice process, including special interview rooms designed for children and child-sensitive methods of questioning;
(c) establish special procedures for the collection of evidence from child victims and witnesses – such as video and audio recording of the child declarations – in order to reduce the number of interviews, statements and hearings." (Syrian Arab Republic CRC/C/OPSC/SYR/CO/1, paras. 18 and 19)

Article 9 requires States to take preventive measures against these offences, including banning promotional advertising, and to disseminate information about the harmful effects of the offences and these preventive measures to the general public as well as to children themselves (encouraging the participation of children in this process). The article also obliges States to ensure that child victims are provided with social rehabilitation and access to compensation procedures.

Under article 10, States must take all necessary steps for effective cross-national collaboration to prevent, detect and punish those who are responsible for sale of children, child pornography and prostitution, and to assist the social rehabilitation of child victims. It also mentions the need to tackle the root causes of the offences, such as poverty and underdevelopment.

The Committee naturally welcomes any measures under articles 9 and 10, though it usually sees room for improvement, for example congratulating Denmark on its many initiatives but encouraging it to improve aspects of witness protection and the vetting of people working with children:

"The Committee... welcomes the establishment of a special investigation unit specialized in criminal offences committed on the Internet, including child pornography, by the Office of the National Commissioner of Police, and three knowledge centres, the Team for Sexually Abused Children at the Copenhagen University Hospital, the Danish National Centre for Social Efforts against Child Sexual Abuse (SISO) and Janus, a knowledge centre concerning young people who have committed sexual assaults on other children and young people.
"The Committee notes with great appreciation that the National Commissioner of the Police, Save the Children Denmark and the telecommunication services provider TDC have introduced a filter for blocking access to Internet sites containing images of child pornography and that the filter has been successful in blocking access to these sites for an average of 1,700 users every day.
"Furthermore, the Committee notes with appreciation measures taken for the physical and psychological recovery of children, such as subsidies for consultations with psychologists, and the increase in the penalties for the recording and dissemination of child pornography.
"The Committee notes with interest that a witness protection programme has been developed in Denmark but is concerned that repatriation of trafficking victims is prioritized with few guarantees of witness protection measures in the country of origin.
"The Committee recommends that children who cannot be guaranteed witness protection upon repatriation be guaranteed permission to reside in Denmark and receive protection. Access to shelter and temporary residence permission for foreign child victims of trafficking should be granted during the investigation period.
"The Committee welcomes the Act on Obtaining Criminal Records Disclosures in Connection with Employment of Staff, which entered into force on 1 July 2005 and which strengthens the efforts against sexual abuse

of children under the age of 15. However, the Committee notes with concern that this act only covers future employees and volunteers, who will have direct contact with children under the age of 15, to be hired by public administration authorities, and that it leaves those already working with children outside its scope of application.

"In order to prevent recidivism among persons convicted of sexual offences against children, the Committee recommends that the State Party consider amending the act on obtaining criminal records disclosures in connection with employment to cover all employees and volunteers already working with children. The Committee further recommends that the State Party provide adequate guidelines and training for the personnel responsible for administering requests for criminal record disclosures." (Denmark CRC/C/OPSC/DNK/CO/1, paras. 5 to 7, 25, 26, 29 and 30)

Effective prevention is only possible if the State understands the scale and nature of the problem, which is why the Committee pays close attention to reporting States' monitoring of the phenomenon, for example taking China to task for having inadequate data:

"The Committee regrets the limited statistical data on sexual exploitation and cross-border trafficking included in the State Party's report, both with regard to mainland China and the Macau SAR. It is further concerned that the data refer almost exclusively to the number of women and children rescued rather than those abducted, and that data often refer to different time periods, which hampers accurate assessment and monitoring of the situation regarding the sale of children, child prostitution and child pornography." (China CRC/C/OPSC/CHN/CO/1, para. 8)

Article 11 is similar to article 41 of the Convention, providing that the Optional Protocol shall not get in the way of measures more conducive to children's rights. And as with the Convention, under article 12 States must submit a full report on implementation to the Committee two years after ratification. Thereafter reporting on the Optional Protocol can be included within States' five yearly periodic reports on the Convention.

The remaining articles describe ratification, implementation, denunciations and amendments in line with other human rights treaties; the absence of provisions for entering a reservation does not mean that a State may not adopt reservations when it ratifies.

Reporting guidelines: see *Guidelines for Periodic Reports (Revised 2005)* (CRC/C/58/Rev.1), Appendix 3, page 699.

Implementation Checklist

• General measures of implementation

Have appropriate general measures of implementation been taken in relation to the Optional Protocol, including

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (the Optional Protocol is relevant to **departments of justice, foreign affairs, home affairs, labour, education, social welfare and health**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?
- ☐ adoption of a strategy to secure full implementation
  - ☐ which includes where necessary the identification of goals and indicators of progress?
  - ☐ which does not affect any provisions which are more conducive to the rights of the child?
  - ☐ which recognizes other relevant international standards?
  - ☐ which involves where necessary international cooperation?

  (Such measures may be part of an overall governmental strategy for implementing the Convention as a whole).
- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of the Optional Protocol widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to the Optional Protocol likely to include the training of **police, border staff, court officers, social workers, adoption agencies' staff and health personnel**)?

• Specific issues in implementing the Optional Protocol

- ☐ Are all forms of selling children - transactions whereby a child is transferred by any person or group of person to another for remuneration - criminal offences under domestic law?

Is it a criminal offence to offer, deliver or accept a child for the purpose of:

  - ☐ sexually exploiting the child?
  - ☐ transferring the child's organs for profit?
  - ☐ engaging the child in forced labour?
- ☐ Is it a criminal offence to improperly induce consent as an intermediary for the adoption of a child?
- ☐ Is it a criminal offence to offer, obtain, procure or provide a child for child prostitution (using the child in sexual activities for any form of gain)?
- ☐ Is it a criminal offence to produce, distribute, disseminate, import, export, offer, sell or possess for any of these purposes, child pornography (any representation of

How to use the checklist, *see page XIX*

the child engaged in any sexual activity or any representation of the sexual parts of children for a sexual purpose)

- ☐ Do these criminal offences have appropriate penalties, reflecting their grave nature?
- ☐ Are there provisions for the seizure or confiscation of any goods relating to or proceeds derived from these offences?
- ☐ Are measures available to close premises used to commit these offences?
- ☐ Are all forms of advertising or promoting these offences prohibited?
- ☐ Are legal entities (for example companies) liable for these offences?
- ☐ Does domestic criminal law in relation to these offences apply to all foreign nationals who commit them within the jurisdiction?
- ☐ Are these offences included as extraditable offences in all treaties and agreements between the State and other countries?
- ☐ Does the State provide the greatest measures of assistance to all other countries in the investigation, prosecution or seizure of property relating to the commission of these offences?
- ☐ Are child victims of treated humanely as victims, not criminals, and provided with all appropriate forms of support and assistance?
- ☐ Are child victims kept fully informed about their rights and about the details of any criminal cases relating to their exploitation?
- ☐ Do all stages of the criminal justice procedures recognize vulnerability of child victims and give primary consideration to their best interests?
- ☐ Has the State used the United Nations Economic and Social Council's Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime when developing legislation, procedures, policies and practice for these children?
- ☐ Is special training, particularly legal and psychological, provided for those who work with child victims?
- ☐ Are criminal justice procedures adapted to accommodate children's special needs as witnesses?
- ☐ Are child victims supported throughout legal processes?
- ☐ Are the views, needs and concerns of child victims ascertained and considered in any proceeding affecting their personal interests?
- ☐ Is the privacy of child victims fully protected within the criminal justice system?
- ☐ Does the law prohibit any form of identification of child victims?
- ☐ Is appropriate provision made available where necessary to protect child victims and their families or witnesses on their behalf from intimidation or retaliation?
- ☐ Are appropriate measures available where necessary to protect the safety and integrity of those who are involved in helping child victims?
- ☐ Is unnecessary delay avoided in all cases involving child victims and in the delivery of compensation?
- ☐ Does the State disseminate information to children and the general public, through education, training and publicity, about the harmful effects of sale of children and child sexual exploitation and how to prevent these activities?

How to use the checklist, *see page XIX*

- ☐ Are children involved in the preparation of this information?
- ☐ Are adequate measures taken for the full social reintegration and recovery of child victims?
- ☐ Do child victims have access to procedures to seek compensation from those legally responsible?
- ☐ Does the State give full cooperation and support to agencies, both within the jurisdiction and internationally, who aim to prevent, detect and punish those committing these offences?
- ☐ Does the State give full cooperation and support to agencies, within the jurisdiction and internationally, who assist child victims?

Reminder: **The Convention is indivisible and its articles interdependent. The Optional Protocol should not be considered in isolation.**

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children
Article 6: right to life and maximum possible survival and development
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is related to that of the Optional Protocol include:

Article 8: preservation of child's identity
Article 11: protection from illicit transfer and non-return
Article 16: protection from arbitrary interference in privacy, family and home
Article 20: children without families
Article 21: adoption
Article 32: child labour
Article 33: drug abuse and trafficking
Article 34: sexual exploitation
Article 35: prevention of abduction, sale and trafficking
Article 36: other forms of exploitation
Article 39: rehabilitative care
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Appendices

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2 **Convention on the Rights of the Child 685**

- Optional Protocol on the involvement of children in armed conflict 692
- Optional Protocol on the sale of children, child prostitution and child pornography 695

3 **Committee on the Rights of the Child: Guidelines 699**

- Revised Guidelines regarding the form and content of periodic reports to be submitted by States Parties under article 44, paragraph 1(b), of the Convention 699
- Guidelines regarding initial reports to be submitted by States Parties under article 8 (1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 704
- Revised Guidelines regarding initial reports to be submitted by States Parties under Article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 707

4 **Other key instruments 715**

- Universal Declaration of Human Rights, 1948 715
- Declaration of the Rights of the Child, 1959 717
- International Covenant on Civil and Political Rights, 1966 719
- International Covenant on Economic, Social and Cultural Rights, 1966 725
- ILO Minimum Age Convention, 1973 729
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules"), 1985 732
- United Nations Guidelines for the Protection of Juveniles Delinquency (Riyadh Guidelines), 1990 739
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 742
- Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, 1993 747
- Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 1993 751
- ILO Worst Forms of Child Labour Convention, 1999 759
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 761
- Convention on the Rights of Persons with Disabilities, 2006 765

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- Acronyms 787

Guide to the United Nations system

This appendix gives brief directory information about agencies and bodies within the United Nations family which are relevant to the Convention on the Rights of the Child and its implementation

PRINCIPAL ORGANS

• General Assembly

The General Assembly is the main deliberative organ of the United Nations. It is composed of representatives of all Member States, each of which has one vote. As of December 2006 there were 192 Members. The General Assembly normally meets once a year from September to December at United Nations Headquarters in New York, but special sessions and emergency special sessions may also be called.

While the Assembly is empowered to make only non-binding recommendations to States on international issues within its competence, it has, nonetheless, initiated actions – political, economic, humanitarian, social and legal – which have affected the lives of millions of people throughout the world. The landmark Millennium Declaration, adopted in 2000, reflects the commitment of Member States to reach specific goals spelled out in the Declaration to attain peace, security and disarmament along with development and poverty eradication, to protect our common environment, to meet the special needs of Africa and to strengthen the United Nations.

The General Assembly receives and considers reports from other organs. The Committee on the Rights of the Child is required to report on its activities to the General Assembly, through the Economic and Social Council, every two years (article 44(5)).

United Nations Headquarters,
New York, NY 10017, USA
Tel: +1 212 963 1234
Fax: +1 212 963 4879
Website: www.un.org/aboutun/mainbodies.htm

• Security Council

The United Nations Charter gives the Security Council primary responsibility for maintaining international peace and security. The Council may convene at any time, whenever peace is threatened. Under the Charter, all Member States are obligated to carry out the Council's decisions.

When the Council considers a threat to international peace, it first explores ways to settle the dispute peacefully. It may suggest principles for a settlement or undertake mediation. In the event of fighting, the Council tries to secure a ceasefire. It may send a peacekeeping mission to help the parties maintain the truce and to keep opposing forces apart.

The Council also adopts resolutions and makes recommendations; for instance on children and armed conflict (1999).

United Nations Headquarters,
New York, NY 10017, USA
Tel: +1 212 963 1234
Fax: +1 212 963 4879
Website: www.un.org/Docs/sc

• International Court of Justice

The principal judicial organ of the United Nations operates under a Statute which is an integral part of the Charter of the United Nations. The Court has a dual role: to settle in accordance with international law the legal disputes submitted to it by States, and to give advisory opinions on legal questions referred to it by duly authorized international organs and agencies. It decides in accordance with international treaties and conventions in force, international custom and the general principles of law.

Peace Palace
2517 KJ The Hague, The Netherlands
Tel: +31 70 302 2323
Fax: +31 70 364 9928
Website: www.icj-cij.org

• Economic and Social Council

The Economic and Social Council (ECOSOC) serves as the central forum for discussing international economic and social issues, and for formulating policy recommendations addressed to Member States and the United Nations system. It is responsible for promoting higher standards of living, full employment, and economic and social progress; identifying solutions to international economic, social and health problems; facilitating international cultural and educational cooperation; and encouraging universal respect for human rights and fundamental freedoms. It has the power to make or initiate studies and reports on these issues. It also has the power to assist the preparations and organization of major international conferences in the economic and social and related fields and to facilitate a coordinated follow-up to these conferences.

The ECOSOC was established under the United Nations Charter as the principal organ to coordinate economic, social, and related work of the 14 United Nations specialized agencies, 5 regional commissions and 10 functional commissions, including the Commission for Social Development, the Commission on Population and Development, the Commission on the Status of Women. The Council also receives reports from 11 Funds and programmes.

United Nations Headquarters,
DPCSD Room 2963J,

New York, NY 10017, USA
Tel: +1 212 963 1234
Fax: +1 212 963 4879
Website: www.un.org/docs/ecosoc

Human Rights Bodies

• Office of the High Commissioner for Human Rights (OHCHR)

OHCHR, a department of the United Nations Secretariat, is mandated to promote and protect the enjoyment and full realization, by all people, of all rights established in the Charter of the United Nations and in international human rights laws and treaties. The mandate includes preventing human rights violations, securing respect for all human rights, promoting international cooperation to protect human rights, coordinating related activities throughout the United Nations, and strengthening and streamlining the United Nations system in the field of human rights. In addition to its mandated responsibilities, the Office leads efforts to integrate a human rights approach within all work carried out by United Nations agencies.

The Office, formerly known as the United Nations Centre for Human Rights, provides secretariat and substantive services to the United Nations Human Rights bodies, including the Committee on the Rights of the Child.

The Office conducts research and studies on human rights, coordinates liaison with NGOs, prepares publications, collects and disseminates information. It also provides, upon request from governments, advisory services and technical assistance. For details see Advisory Services and technical cooperation in the field of human rights, Human Rights Fact Sheet No.3 (rev.1), Centre for Human Rights, 1996.

Palais des Nations,
1211 Geneva 10, Switzerland
Tel: +41 22 917 9000
Fax: +41 22 917 9016
Website: www.ohchr.org

• Human Rights Council (HRC)

The Human Rights Council is the body created in April 2006 by United Nations Member States to promote universal respect for the protection of all human rights and fundamental freedoms for all. The Council replaces the Commission on Human Rights and is a subsidiary organ of the General Assembly. While the Commission met only once per year in a single six-week session, the Geneva-based Council will hold no fewer than three sessions per year (including a main session) and will also be able to hold special sessions when necessary.

Palais des Nations,
1211 Geneva 10, Switzerland
Tel: +41 22 917 9000
Fax: +41 22 917 9016
Website: www.ohchr.org

The Human Rights Council assumes several "special procedures", which is the general name given to the mechanisms established by the Commission on Human Rights to address either specific country situations or thematic issues in all parts of the world. Currently, there are 28 thematic and 13 country mandates in place, including:

– Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography established in 1990 to fulfil the mandate of assessing the situation of the sale of children, child prostitution and child pornography worldwide.
– Special Rapporteur on the right to education
– Special Rapporteur on the right to food
– Special Rapporteur on adequate housing
– Special Rapporteur on freedom of religion or belief
– Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment
– Special Rapporteur on violence against women, its causes and consequences
– Special Rapporteur on the human rights of migrants

• Committee against Torture

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force in 1987, and establishes an expert committee of 10, elected by States Parties to the Convention. It considers reports, makes general comments and where a State has accepted its competence may make inquiries about individual States Parties, and also about applications from individuals claiming to be victims of a violation of the Convention.

Palais des Nations,
1211 Geneva 10, Switzerland
Tel: +41 22 917 9000
Fax: +41 22 917 9016
Website: www.ohchr.org

• Committee on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights entered into force in 1976. The Economic and Social Council of the General Assembly (ECOSOC) at first established a working group on implementation, to assist it with consideration of reports. In 1985, ECOSOC, by resolution 1985/17, renamed the Working Group the Committee on Economic, Social and Cultural Rights, to be composed of 18 experts. It considers States Parties' reports, and reports to ECOSOC.

Palais des Nations,
1211 Geneva 10, Switzerland
Tel: +41 22 917 9000
Fax: +41 22 917 9016
Website: www.ohchr.org

• Committee on the Elimination of Discrimination against Women

The Convention on the Elimination of All Forms of Discrimination against Women entered into force in 1981 and establishes an expert committee of 23, elected by States Parties. It considers progress made in implementation, including considering reports submitted by States Parties.

United Nations Division for the Advancement of Women,
Department of Economic and Social Affairs,
2 UN Plaza, DC2-12th Floor,
New York, NY 10017, USA
Tel: +1 212 963 1151
Fax: +1 212 963 3463
Website: www.un.org/womenwatch/daw/cedaw/committee.htm

• Committee on the Elimination of Racial Discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination entered into force in 1969 and establishes a Committee of 18 experts elected by States Parties. The Committee examines reports from States Parties, and where a State has accepted its competence, may consider communications from individuals or groups of individuals claiming to be victims of a violation of the Convention.

Palais des Nations,
1211 Geneva 10, Switzerland
Tel: +41 22 917 9000
Fax: +41 22 917 9016
Website: www.ohchr.org

• Committee on the Rights of the Child

For detailed description of mandate and role, see article 43, page 637.

Palais des Nations,
1211 Geneva 10, Switzerland
Tel: +41 22 917 9000
Fax: +41 22 917 9016
Website: www.ohchr.org

• Human Rights Committee

The International Covenant on Civil and Political Rights entered into force in 1976, and establishes an expert committee of 18. The Human Rights Committee considers reports from States Parties. Under the First Optional Protocol to the Covenant, States may recognize the competence of the Committee to consider communications from individuals alleging violations of human rights. A Second Optional Protocol, aimed at abolition of the death penalty, came into force in 1991.

Palais des Nations,
1211 Geneva 10, Switzerland
Tel: +41 22 917 9000
Fax: +41 22 917 9016
Website: www.ohchr.org

• Committee on the Protection of the Rights of All Migrant Workers and Members of their Families

The Committee monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by its State Parties. It is the newest treaty body* which held its first session in March 2004. It meets in Geneva and normally holds one session per year.

Palais des Nations,
1211 Geneva 10, Switzerland
Tel: +41 22 917 9000
Fax: +41 22 917 9016
Website: www.ohchr.org

**The International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities, both adopted in 2006, will establish new Treaty Bodies which will become operational as the Conventions come into force.*

OFFICES, PROGRAMMES AND FUNDS

• Joint United Nations Programme on HIV/AIDS (UNAIDS)

Established in 1996, UNAIDS brings together the efforts and resources of 10 organizations of the United Nations system to the global AIDS response. Cosponsors include UNHCR, UNICEF, WFP, UNDP, UNFPA, UNODC, ILO, UNESCO, WHO and the World Bank. Based in Geneva, the UNAIDS secretariat works on the ground in more than 75 countries worldwide. It strives to prevent the spread of HIV/AIDS amongst children and youth and to reduce the vulnerability of children, families and communities to its impact.
20, avenue Appia,
1211 Geneva 27, Switzerland
Tel: +41.22.791.3666
Fax: +41.22.791.4187
Website: www.unaids.org

• Office of the United Nations High Commissioner for Refugees (UNHCR)

The Office of the United Nations High Commissioner for Refugees was established in 1950 by the United Nations General Assembly. The agency is mandated to lead and coordinate international action to protect refugees and resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and well-being of refugees. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or to resettle in a third country. UNHCR has developed specific policies, practices and guidelines relating to refugee children.
94 rue de Montbrillant,
Case postale 2500,
1211 Geneva 2, Switzerland
Tel: +41 22 739 8111
Fax: +41 22 731 9546
Website: www.unhcr.org

• United Nations Children's Fund (UNICEF)

In 1946 the General Assembly established the United Nations International Children's Emergency Fund as a temporary body to provide emergency assistance to children in war-ravaged countries. By resolution in 1953 it placed the Fund on a permanent footing, changing the name but retaining the acronym.
UNICEF is mandated by the United Nations General Assembly to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential. UNICEF focuses its attention on implementing the rights contained in the Convention on the Rights of the Child, using them as a blueprint for its programmes. UNICEF programmes seek to combine strategies for improving access to and quality of basic social services together with legal, policy, and public education initiatives that promote and protect children's rights. UNICEF assists governments in revising policies and institutions and in making and enforcing laws that uphold the best interests of children. An integral part of UNICEF's approach is to create opportunities for children to express their views on issues affecting their lives and to actively participate in decision-making processes.
Three United Nations Plaza,
New York, NY 10017, USA
Tel: +1 212 326 7000
Fax: +1 212 888 7465
Website: www.unicef.org

• United Nations Development Fund for Women (UNIFEM)

UNIFEM is the women's fund at the United Nations. It provides financial and technical assistance to innovative programmes and strategies to foster women's empowerment and gender equality. Placing the advancement of women's human rights at the centre of all of its efforts, UNIFEM focuses its activities on four strategic areas: (1) reducing feminized poverty, (2) ending violence against women, (3) reversing the spread of HIV/AIDS among women and girls, and (4) achieving gender equality in democratic governance in times of peace as well as war.
304 East 45th Street, 15th Floor
New York, NY 10017, USA
Tel: +1 212 906 6400
Fax: +1 212 906 6705
Website: www.unifem.org

• United Nations Development Programme (UNDP)

UNDP is the United Nations' global development network, an organization advocating for change and connecting countries to knowledge, experience and resources to help people build a better life. UNDP is on the ground in 166 countries, working with countries on their own solutions to global and national development challenges. World leaders have pledged to achieve the Millennium Development Goals. UNDP's network links and coordinates global and national efforts to reach these Goals. The annual Human Development Report, commissioned by UNDP, focuses the global debate on key development issues, providing new measurement tools, innovative analysis and often controversial policy proposals.
One United Nations Plaza,
New York, NY 10017, USA
Tel: +1 (212) 906 5000
Fax: +1 (212) 906 5364
Website: www.undp.org

• United Nations Environment Programme (UNEP)

UNEP is the United Nations system's designated entity for addressing environmental issues at the global and regional level. Its mandate is to coordinate the development of environmental policy consensus by keeping the global environment under review and bringing emerging issues to the attention of governments and the international community for action. It provides leadership and encourages partnership in caring for the environment by inspiring, informing and enabling nations and peoples to improve their quality of life without compromising that of future generations.
United Nations Avenue, Gigiri,
PO Box 30552,
00100 Nairobi, Kenya
Tel: +254 20 7621234
Fax: +254 20 7624489/90
Website: www.unep.org

• United Nations Human Settlements Programme (UN-Habitat)

UN-HABITAT is mandated by the United Nations General Assembly to promote socially and environmentally sustainable towns and cities with the goal of providing adequate shelter for all. Its mission is to promote socially and environmentally sustainable human settlements development and the achievement of adequate shelter for all.
P.O. Box 30030, GPO,
00100 Nairobi, Kenya
Tel: +254 20 7621234
Fax: +254 20 7624266
Website: www.unhabitat.org

• United Nations Office on Drugs and Crime (UNODC)

UNODC is the umbrella organization that makes up the United Nations Drug Control Programme (UNDCP) and the Centre for International Crime Prevention (CICP). It also includes the Terrorism Prevention Branch and the Global Programmes against Money Laundering, Corruption, Organized Crime and Trafficking in Human Beings. All the organizations are based in Vienna, Austria. UNODC works to educate the world about the dangers of drug abuse and to strengthen international action against drug production, trafficking and drug-related crime through alternative development projects, illicit crop monitoring and anti-money laundering programmes.
Vienna International Centre,
P.O. Box 500,
1400 Vienna, Austria
Tel: +43 1 260 600
Fax: +43 1 26060 5866
Website: www.unodc.org

• United Nations Population Fund (UNFPA)

UNFPA is an international development agency that promotes the right of every woman, man and child to enjoy a life of health and equal opportunity. UNFPA supports countries in using population data for policies and programmes to reduce poverty and to ensure that every pregnancy is wanted, every birth is safe, every young person is free of HIV/AIDS, and every girl and woman is treated with dignity and respect.
220 East 42nd Street,
New York, NY 10017, USA.
Tel: +1 212-297-5000
Fax: +1 212 297 4915
Website: www.unfpa.org

• World Food Programme (WFP)

As the food aid arm of the United Nations, WFP uses its resources to meet emergency needs and support economic and social development. The Agency also provides the logistics support necessary to get food aid to victims of natural disasters and displaced people. WFP works to put hunger at the centre of the international agenda, promo-

ting policies, strategies and operations that directly benefit the poor and hungry.
Via C.G. Viola 68, Parco dei Medici
00148 Rome, Italy
Tel: +39-06-65131
Fax: +39-06-6513 2840
Website: www.wfp.org

SPECIALIZED AGENCIES

These are separate autonomous organizations, "established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health and related fields", and which have "been brought into relationship with the United Nations". In some cases their activities are coordinated by ECOSOC.

• International Labour Organization (ILO)

Established in 1919; became a specialized agency of the United Nations in 1946. ILO seeks to improve working and living conditions through the adoption of international labour conventions and recommendations setting standards in such fields as wages, hours of work, conditions of employment and social security. It conducts research and technical cooperation activities with the aim of promoting democracy and human rights, alleviating unemployment and poverty, and protecting working people. ILO has a tripartite structure, representing governments, employers and workers. The International Labour Conference meets each year.
ILO aims to establish national policies to eliminate child labour effectively, and to raise the minimum age for work to a level consistent with the development of children. In addition, ILO established the Worst Forms of Child Labour Convention, 1999 (No. 182) that focuses on eliminating the most exploitative forms of child labour. In the field of technical cooperation, ILO has operated the IPEC Programme since 1992 to strengthen national capacities and to create a worldwide movement against child labour. The Programme has several specific international campaign activities to raise awareness among the general public, notably World Day against Child Labour, Red Card to Child Labour, and SCREAM (Supporting Children's Rights through Education, the Arts and the Media).
International Labour Standards Department
4 Route des Morillons,
1211 Geneva 22, Switzerland
Tel: +41 22 799 7155/799 6111
Fax: +41 22 799 6771
Website: www.ilo.org

• Food and Agriculture Organization (FAO)

Established in 1945. FAO leads international efforts to defeat hunger. Serving both developed and developing countries, FAO acts as a neutral forum where all nations meet as equals to negotiate agreements and debate policy. FAO is also a source of knowledge and information, and helps developing countries and countries in transition modernize and improve agriculture, forestry and fisheries practices and ensure good nutrition for all. Since its founding in 1945, FAO has focused special attention on developing rural areas, home to 70 percent of the world's poor and hungry people. FAO's activities comprise four main areas: (1) Putting information within reach, serving as a knowledge network and using the expertise of its staff – agronomists, foresters, fisheries and livestock specialists, nutritionists, social scientists, economists, statisticians and other professionals – to collect, analyse and disseminate data that aid development; (2) Sharing policy expertise: FAO lends its years of experience to member countries in devising agricultural policy, supporting planning, drafting effective legislation and creating national strategies to achieve rural development and hunger alleviation goals; (3) Providing a meeting place for nations, and (4) Bringing knowledge to the field.
Viale Delle Terme di Caracalla,
00100 Rome, Italy
Tel: +39 06 57051
Fax: +39 06 5705 3152
Website: www.fao.org

• United Nations Educational, Scientific and Cultural Organization (UNESCO)

Established in 1945, the central purpose of UNESCO is to contribute to peace, security and development through education and intellectual cooperation. Because of its mandate for education and human rights teaching, a significant part of the Organization's work has always been in the service of children's rights. A major effort of the Organization since its foundation has been to ensure the child's right to education. In working with its Member States, UNESCO has been concerned to promote not just literacy or instruction in the sciences, but an education that promotes tolerance and respect for others. In addition, support is provided for the Convention's non-discrimination principle, by working actively for the education of girls and other marginalized groups, such as children with special needs, street children, children speaking minority languages, children in armed conflict.
UNESCO launched the Education for All movement at the World Conference on Education for All in 1990. It is a global commitment to provide quality basic education for all children, youth and adults. Ten years later, with many countries far from having reached this goal, the international community met again in Dakar, Senegal, and affirmed their commitment to achieving Education for All by the year 2015. They identified six key education goals which aim to meet the learning needs of all children, youth and adults by 2015.
7 Place de Fontenoy,
75700 Paris, France
Tel: +33 1 45 68 10 00
Fax: +33 1 45 67 16 90
Website: www.unesco.org

• World Health Organization (WHO)

The World Health Organization, established in 1948, has its headquarters in Geneva, Switzerland, with Regional Offices in Alexandria; Copenhagen; Brazzaville; Manila; New Delhi and Washington. The work of WHO towards its main objective of the attainment by all peoples of the highest possible level of mental and physical health includes many activities aimed at children. These activities contribute to assuring the right of all children to health and health care. Specific examples include Integrated Management of Childhood Illness (IMCI), a strategy jointly developed with UNICEF to address the major killers of children: pneumonia, diarrhoea, measles, malaria and malnutrition through a combination of preventive and treatment interventions. WHO's Expanded Programme on Immunization aims to ensure that children everywhere receive protection against common diseases for which vaccines exist. Promotion of better nutrition, including breastfeeding and the prevention of injury, are other examples of how WHO is working to protect children's rights in the area of health. The Organization also has an initiative addressed to school children and an adolescent health programme targeting the special needs and rights of this group of children. The World Health Assembly is held annually.
20 Avenue Appia,
1211 Geneva 27, Switzerland
Tel: +41 22 791 2111
Fax: +41 22 791 0746
Website: www.who.int

• World Bank Group

The World Bank Group includes the International Bank for Reconstruction and Development (IBRD); the International Development Association (IDA); and the International Finance Corporation (IFC). The IBRD was established to promote the international flow of capital for productive purposes and to assist in financing the rebuilding of nations devastated by the Second World War. Its main objective now is lending for productive projects or to finance reform programmes which will lead to economic growth in its less developed member countries. The IDA's purpose is to promote economic development by providing finance to the less developed regions of the world on much more concessionary terms than those of conventional loans. The IFC's particular purpose is to promote the growth of the private sector and to assist productive private enterprises in its developing member countries, where such enterprises can advance economic development.
1818 H Street NW,
Washington DC 20433, USA
Tel: +1 202 477 1234
Fax: +1 202 477 6391
Website: www.worldbank.org

• International Monetary Fund (IMF)

The purposes of the IMF are to promote international monetary cooperation through consultation and collaboration; facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real

income; promote exchange stability and orderly exchange arrangements; assist in the establishment of a multilateral system of payments and the elimination of foreign exchange restrictions; assist members through the temporary provision of financial resources to correct maladjustments in their balance of payments.
700 19th Street NW,
Washington DC 20431, USA
Tel: +1 202 623 7090
Fax: +1 202 623 6220
Website: www.imf.org

• World Tourism Organization (UNWTO)

The UNWTO serves as a global forum for tourism policy issues and practical source of tourism know-how. It plays a central and decisive role in promoting the development of responsible, sustainable and universally accessible tourism, with the aim of contributing to economic development, international understanding, peace, prosperity and universal respect for, and observance of, human rights and fundamental freedoms.
The Task Force to Protect Children from Sexual Exploitation in Tourism, established by the UNWTO in 1997 as a follow-up to the Stockholm Congress against Commercial Sexual Exploitation of Children (August 1996), is a global action whose aim is to prevent, uncover, isolate and eradicate the sexual exploitation of children in tourism. The Task Force's on-line service, the Child Prostitution and Tourism Watch, provides information on current projects and activities, partners' tourism policy documents, related facts and figures and other measures to help prevent sexual abuse of children in tourism networks.
Calle Capitán Haya, 42,
28020 Madrid, Spain
Tel.: +34 915 678 100
Fax: +34 915 713 733
Website: www.unwto.org

• International Organization for Migration (IOM)

Established in 1951, IOM is the leading inter-governmental organization in the field of migration and works closely with governmental, intergovernmental and non-governmental partners. With 120 member States, a further 19 States holding observer status and offices in over 100 countries, IOM works to help ensure the orderly and humane management of migration, to promote international cooperation on migration issues, to assist in the search for practical solutions to migration problems and to provide humanitarian assistance to migrants in need, including refugees and internally displaced people.
17, Route des Morillons,
1211 Geneva 19, Switzerland
Tel: +41 22 717 9111
Fax: +41 22 798 6150
Website: www.iom.int

Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989
Entry into force 2 September 1990, in accordance with article 49

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, 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,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, 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,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "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",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1
For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2
1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3
1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4
States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5
States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6
1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7
1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8
1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9
1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10
1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11
1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12
1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13
1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14
1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15
1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16
1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 17
States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.
To this end, States Parties shall:
(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
(c) Encourage the production and dissemination of children's books;
(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18
1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19
1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20
1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, *inter alia*, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21
States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:
(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22
1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason , as set forth in the present Convention.

Article 23
1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is

made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24
1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
(a) To diminish infant and child mortality;
(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
(c) To combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
(d) To ensure appropriate pre-natal and post-natal health care for mothers;
(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
(f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25
States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26
1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27
1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28
1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
(a) Make primary education compulsory and available free to all;
(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
(c) Make higher education accessible to all on the basis of capacity by every appropriate means;
(d) Make educational and vocational information and guidance available and accessible to all children;
(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29
1. States Parties agree that the education of the child shall be directed to:
(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
(e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30
In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other

members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31
1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32
1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
(a) Provide for a minimum age or minimum ages for admission to employment;
(b) Provide for appropriate regulation of the hours and conditions of employment;
(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33
States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34
States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
(a) The inducement or coercion of a child to engage in any unlawful sexual activity;
(b) The exploitative use of children in prostitution or other unlawful sexual practices;
(c) The exploitative use of children in pornographic performances and materials.

Article 35
States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36
States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37
States Parties shall ensure that:
(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38
1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39
States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40
1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
(i) To be presumed innocent until proven guilty according to law;
(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
(vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation;

foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:
(a) The law of a State party; or
(b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
2. The Committee shall consist of eighteen experts of high moral standing and recognized competence in the field covered by this Convention.1/ The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.
5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.
7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.
8. The Committee shall establish its own rules of procedure.
9. The Committee shall elect its officers for a period of two years.
10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.
11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.
12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights
(a) Within two years of the entry into force of the Convention for the State Party concerned;
(b) Thereafter every five years.
2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.
3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.
4. The Committee may request from States Parties further information relevant to the implementation of the Convention.
5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.
6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:
(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;
(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;
(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;
(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General

of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000 entry into force on 12 February 2002

The States Parties to the present Protocol,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Reaffirming that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences it has for durable peace, security and development,

Condemning the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places that generally have a significant presence of children, such as schools and hospitals,

Noting the adoption of the Rome Statute of the International Criminal Court, in particular, the inclusion therein as a war crime, of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts,

Considering therefore that to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child there is a need to increase the protection of children from involvement in armed conflict,

Noting that article 1 of the Convention on the Rights of the Child specifies that, for the purposes of that Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier,

Convinced that an optional protocol to the Convention that raises the age of possible recruitment of persons into armed forces and their participation in hostilities will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Noting that the twenty-sixth International Conference of the Red Cross and Red Crescent in December 1995 recommended, *inter alia*, that parties to conflict take every feasible step to ensure that children below the age of 18 years do not take part in hostilities,

Welcoming the unanimous adoption, in June 1999, of International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which prohibits, *inter alia*, forced or compulsory recruitment of children for use in armed conflict,

Condemning with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard,

Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

Stressing that the present Protocol is without prejudice to the purposes and principles contained in the Charter of the United Nations, including Article 51, and relevant norms of humanitarian law,

Bearing in mind that conditions of peace and security based on full respect of the purposes and principles contained in the Charter and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflicts and foreign occupation,

Recognizing the special needs of those children who are particularly vulnerable to recruitment or use in hostilities contrary to the present Protocol owing to their economic or social status or gender,

Mindful of the necessity of taking into consideration the economic, social and political root causes of the involvement of children in armed conflicts,

Convinced of the need to strengthen international cooperation in the implementation of the present Protocol, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict,

Encouraging the participation of the community and, in particular, children and child victims in the dissemination of informational and educational programmes concerning the implementation of the Protocol,

Have agreed as follows:

Article 1
States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Article 2
States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

Article 3
1. States Parties shall raise in years the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.
2. Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.
3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:
(a) Such recruitment is genuinely voluntary;
(b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians;
(c) Such persons are fully informed of the duties involved in such military service;
(d) Such persons provide reliable proof of age prior to acceptance into national military service.
4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.
5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

Article 4
1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.
2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.
3. The application of the present article shall not affect the legal status of any party to an armed conflict.

Article 5
Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

Article 6
1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of the present Protocol within its jurisdiction.
2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.
3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

Article 7
1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with the States Parties concerned and the relevant international organizations.
2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes or, *inter alia*, through a voluntary fund established in accordance with the rules of the General Assembly.

Article 8
1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.
2. Following the submission of the comprehensive report, each State Party shall include in the reports it submits to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.
3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

Article 9
1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.
3. The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 3.

Article 10
1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 11
1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary- General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General. If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

Article 12

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

Article 13

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000 entered into force on 18 January 2002

The States Parties to the present Protocol,

Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet, held in Vienna in 1999, in particular its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children,

Believing also that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and believing further in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental

Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Have agreed as follows:

Article 1
States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2
For the purposes of the present Protocol:
(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 3
1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:
(a) In the context of sale of children as defined in article 2:
(i) Offering, delivering or accepting, by whatever means, a child for the purpose of:
a. Sexual exploitation of the child;
b. Transfer of organs of the child for profit;
c. Engagement of the child in forced labour;
(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;
(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.
2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.
3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.
4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.
5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Article 4
1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.
2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:
(a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;
(b) When the victim is a national of that State.
3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the aforementioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.
4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 5
1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.
2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider the present Protocol to be a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.
3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.
5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

Article 6
1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 7
States Parties shall, subject to the provisions of their national law:
(a) Take measures to provide for the seizure and confiscation, as appropriate, of:
(i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;
(ii) Proceeds derived from such offences;
(b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);
(c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Article 8
1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
(d) Providing appropriate support services to child victims throughout the legal process;
(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.
2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.
3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.
4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.
5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.
6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

Article 9

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.
2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.
3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.
4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.
5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

Article 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.
2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.
3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.
4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

Article 11

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:
(a) The law of a State Party;
(b) International law in force for that State.

Article 12

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.
2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.
3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

Article 13

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary- General of the United Nations.

Article 14

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 15

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary- General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

Article 16

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall

enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

Article 17

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

Committee on the Rights of the Child

General Guidelines regarding the form and content of periodic reports to be submitted by States Parties under article 44, paragraph 1(b), of the Convention

Adopted by the Committee at its thirty-ninth session on 3 June 2005

Introduction and purpose of reporting

1. These guidelines for periodic reports replace those adopted by the Committee at its thirteenth session on 11 October 1996 (CRC/C/58). The present guidelines do not affect any request the Committee may make under article 44, paragraph 4, of the Convention on the Rights of the Child for States Parties to provide further information relevant to the implementation of the Convention.

2. These guidelines will cover all periodic reports submitted after 31 December 2005. The present guidelines include an overview of the purpose and organization of the report and the substantive information required under the Convention. Finally the annex provides more detail on the type of statistical data required by the Committee in accordance with the substantive provisions of the Convention.

3. The present guidelines group the articles of the Convention in clusters with a view to assisting States Parties in the preparation of their reports. This approach reflects the holistic perspective on children's rights taken by the Convention: i.e. that they are indivisible and interrelated, and that equal importance should be attached to each and every right recognized therein.

4. The periodic report should provide the Committee with a basis for constructive dialogue with the State Party about the implementation of the Convention and the enjoyment of human rights by children in the State Party. Consequently, reports must strike a balance in describing the formal legal situation and the situation in practice. Therefore the Committee requests that for each cluster the State Party provide information with regard to: follow-up, monitoring, resource allocation, statistical data and challenges to implementation, as stated in paragraph 5, below.

SECTION I: ORGANIZATION OF THE REPORT

5. According to article 44, paragraph 3, of the Convention, when a State Party has submitted a comprehensive Initial Report to the committee or has previously provided detailed information to the Committee, it need not repeat such information in its subsequent reports. It should, however, clearly make reference to the information previously transmitted and indicate any changes that have occurred during the reporting period.

6. Information provided in States Parties' reports on each cluster identified by the Committee should follow the present guidelines and in particular the annex, with regard to form and content. In this regard States Parties should provide information for each cluster, or where appropriate for individual articles where relevant, on:

(a) Follow-up: The first paragraph on each cluster should systematically include information on concrete measures taken with regard to the concluding observations adopted by the Committee in relation to the previous report;

(b) Comprehensive national programmes – monitoring: The subsequent paragraphs should contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned as well as the mechanisms established within the Government to monitor progress. States Parties shall provide relevant information, including on the principal legislative, judicial, administrative or other measures in force or foreseen. This section should not be confined to merely listing measures adopted in the country in recent years, but should provide clear information on the goals and timetables of those measures and how they have had an impact on the actual economic, political and social realities and general conditions existing in the country;

(c) Allocation of budgetary and other resources: States Parties shall provide information on the amount and percentage of the national budget (at central and local levels) devoted annually to children, including, where appropriate, the percentage of external financing (through donors, international financial institutions and private banking) of the national budget, with respect to relevant programmes under each cluster. In this regard, where appropriate, States Parties should provide information on poverty reduction strategies and programmes and other factors which impact or may impact on the implementation of the Convention;

(d) Statistical data: States Parties should provide, where appropriate, annual statistical data disaggregated by age/age group, gender, urban/rural area, membership of a minority and/or indigenous group, ethnicity, disability, religion, or other category as appropriate;

(e) Factors and difficulties: The last paragraph should describe any factors and difficulties, if any, affecting the fulfilment of

the obligations of States Parties' obligations for the cluster concerned, as well as information on the targets set for the future.
7. Reports should be accompanied by copies of the principal legislative texts and judicial decisions, as well as detailed disaggregated data, statistical information, indicators referred to therein and relevant research. The data should be disaggregated as described above and changes that have occurred since the previous report should be indicated. This material will be made available to the members of the Committee. It should be noted, however, that for reasons of economy, these documents will not be translated or reproduced for general distribution. It is therefore desirable that when a text is not actually quoted in or annexed to the report itself, the report should contain sufficient information to be clearly understood without reference to those texts.
8. The Committee requests that the report includes a table of contents and numbered sequentially through to the end and that it be printed on A4-sized paper, in order to facilitate distribution of the report and thus its availability for consideration by the Committee.

SECTION II: SUBSTANTIVE INFORMATION TO BE CONTAINED IN THE REPORT

I. GENERAL MEASURES OF IMPLEMENTATION (arts. 4, 42 and 44, para. 6, of the Convention)

9. Under this cluster, States Parties are requested to follow the provisions in paragraphs 5 and 6 above, General Comment No. 2 (2002) on the role of independent national human rights institutions and General Comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child.
10. States Parties that have entered reservations to the Convention should indicate whether they consider it necessary to maintain them. They should also indicate whether they have plans to limit the effects of reservations and ultimately to withdraw them, and, whenever possible, specify the timetable for doing so.
11. States Parties are requested to provide relevant information pursuant to article 4 of the Convention, including information on the measures adopted to bring domestic legislation and practice into full conformity with the principles and provisions of the Convention.
12. (a) States Parties that provide international assistance or development aid should provide information on human and financial resources allocated to programmes for children, in particular within bilateral assistance programmes;
(b) States Parties receiving international assistance or development aid should provide information on the total resources received and the percentage allocated to programmes for children.
13. Recognizing that the Convention represents a minimum standard for children's rights, and in the light of article 41, States Parties should describe any provisions of the domestic legislation that are more conducive to the realization of the rights of the child as enshrined in the Convention.
14. States Parties should provide information on remedies available and their accessibility to children, in cases of violation of the rights recognized by the Convention, as well as information on existing mechanisms at national or local level for coordinating policies relating to children and for monitoring the implementation of the Convention.
15. States Parties should indicate whether there is an independent national human rights institution and describe the process of appointing its members and explain its mandate and role with regard to the promotion and protection of children's rights as outlined in the Committee's General Comment No. 2 (2002). Also indicate how this national human rights institution is financed.
16. States Parties should describe the measures that have been taken or are foreseen, pursuant to article 42 of the Convention, to make the principles and provisions of the Convention widely known to adults and children alike.
17. States Parties should also describe the measures undertaken or foreseen, pursuant to article 44, paragraph 6, to make their reports widely available to the public at large in their own countries. These measures should also include, when appropriate, the translation of the concluding observations of the Committee adopted after the consideration of the previous report into official and minority languages and their wide dissemination, including through the print and electronic media.
18. States Parties should provide information on cooperation with civil society organizations, including non-governmental organizations and children's and youth groups, with regard to implementation of all aspects of the Convention. In addition, please describe the manner in which the present report was prepared and the extent to which non-governmental organizations (NGOs), youth groups and others were consulted.

II. DEFINITION OF THE CHILD (art. 1)

19. States Parties are also requested to provide updated information with respect to article 1 of the Convention, concerning the definition of a child under their domestic laws and regulations, specifying any differences between girls and boys.

III. GENERAL PRINCIPLES (arts. 2, 3, 6 and 12)

20. Under this cluster, States Parties are requested to follow the provisions in paragraphs 5 and 6, above.
21. States Parties should provide relevant information in respect of:
(a) Non-discrimination (art. 2);
(b) Best interests of the child (art. 3);
(c) The right to life, survival and development (art. 6);
(d) Respect for the views of the child (art. 12).
22. Reference should also be made to the implementation of these rights in relation to children belonging to the most disadvantaged groups.
23. With regard to article 2, information should also be provided on the measures taken to protect children from xenophobia and other related forms of intolerance. With regard to article 6, information should also be provided on the measures taken to ensure that persons under 18 are not subject to the death penalty; that the deaths of children are registered, and, where appropriate, investigated and reported, as well as on the measures adopted to prevent suicide among children and to monitor its incidence; and to ensure the survival of children at all ages, in particular adolescents, and that maximum efforts are made to ensure the minimization of risks to which that group may be exposed particularly (for example, sexually transmitted diseases or street violence).

IV. CIVIL RIGHTS AND FREEDOMS (arts. 7, 8, 13-17 and 37 (a))

24. Under this cluster, States Parties are requested to follow the provisions in paragraphs 5 and 6, above.
25. States Parties should provide relevant information in respect of:
(a) Name and nationality (art. 7);
(b) Preservation of identity (art. 8);
(c) Freedom of expression (art. 13);
(d) Freedom of thought, conscience and religion (art. 14);
(e) Freedom of association and of peaceful assembly (art. 15);
(f) Protection of privacy (art. 16);
(g) Access to appropriate information (art. 17);
(h) The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, including corporal punishment (art. 37 (a)).
26. States Parties should refer, *inter alia*, to children with disabilities, children living in poverty, children born out of wedlock, asylum-seeking and refugee children and children belonging to indigenous and/or minority groups.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE (arts. 5, 9-11, 18, paras. 1 and 2; 19-21, 25, 27, para. 4 and 39)

27. Under this cluster, States Parties are requested to follow the provisions in paragraphs 5 and 6, above.
28. States Parties should provide relevant information, including the principal legislative, judicial, administrative or other measures in force, particularly on how the principles of the "best interests of the child" (art. 3) and "respect for the views of the child" (art. 12) are reflected in addressing the questions of:
(a) Parental guidance (art. 5);
(b) Parental responsibilities (art. 18, paras. 1 and 2);
(c) Separation from parents (art. 9);
(d) Family reunification (art. 10);
(e) Recovery of maintenance for the child (art. 27, para. 4);

(f) Children deprived of a family environment (art. 20);
(g) Adoption (art. 21);
(h) Illicit transfer and non-return (art. 11);
(i) Abuse and neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39);
(j) Periodic review of placement (art. 25).
29. The report should also provide information on any relevant bilateral or multilateral agreements, treaties or conventions concluded by the State Party or to which it may have acceded, particularly with regard to articles 11, 18 or 21, and their impact.

VI. BASIC HEALTH AND WELFARE (arts. 6, 18, para. 3, 23, 24, 26, and 27, paras. 1-3)

30. Under this cluster, States Parties are requested to follow the provisions in paragraphs 5 and 6 above, and General Comment No. 3 (2003) on HIV/AIDS and the rights of the child and General Comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child.
31. States Parties should provide relevant information in respect of:
(a) Survival and development (art. 6, para. 2);
(b) Children with disabilities (art. 23);
(c) Health and health services (art. 24);
(d) Social security and childcare services and facilities (arts. 26 and 18, para. 3);
(e) Standard of living (art. 27, paras. 1-3).
32. With regard to article 24, the report should contain information on measures and policies for the implementation of the right to health, including efforts to combat diseases such as HIV/AIDS (see General Comment No. 3 (2003)), malaria and tuberculosis particularly among special groups of children at high risk. In the light of General Comment No. 4 (2003), information on the measures undertaken to promote and protect the rights of young people in the context of adolescent health should also be included. Further, the report should also indicate the legal measures promulgated to prohibit all forms of harmful traditional practices, including female genital mutilation, and to promote awareness-raising activities to sensitize all concerned Parties, including community and religious leaders, on the harmful aspects of these practices.

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES (arts. 28, 29 and 31)

33. Under this cluster, States Parties are requested to follow the provisions in paragraphs 5 and 6 above, and General Comment No. 1 (2001) on the aims of education.
34. States Parties should provide relevant information in respect of:
(a) Education, including vocational training and guidance (art. 28);
(b) Aims of education (art. 29) with reference also to quality of education;
(c) Rest, leisure, recreation and cultural and artistic activities (art. 31).
35. With regard to article 28, reports should also provide information on any category or group of children who do not enjoy the right to education (either due to lack of access or because they have left or been excluded from school) and the circumstances in which children may be excluded from school temporarily or permanently (for example, disability, deprivation of liberty, pregnancy, or HIV/AIDS infection), including any arrangements made to address such situations and to provide alternative education.
36. States Parties should specify the nature and extent of cooperation with local and national organizations of a governmental or non-governmental nature, such as teachers' associations, concerning the implementation of this part of the Convention.

VIII. SPECIAL PROTECTION MEASURES (arts. 22, 30, 32-36, 37 (b)-(d), 38, 39 and 40)

37. Under this cluster, States Parties are requested to follow the provisions in paragraphs 5 and 6 above, and General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin.
38. States Parties are requested to provide relevant information on measures taken to protect:
(a) Children in situations of emergency:
(i) Refugee children (art. 22);
(ii) Children in armed conflicts (art. 38), including physical and psychological recovery and social reintegration (art. 39);
(b) Children in conflict with the law:
(i) The administration of juvenile justice (art. 40);
(ii) Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (art. 37 (b), (c) and (d));
(iii) The sentencing of juveniles, in particular the prohibition of capital punishment and life imprisonment (art. 37 (a));
(iv) Physical and psychological recovery and social reintegration (art. 39);
(c) Children in situations of exploitation, including physical and psychological recovery and social reintegration (art. 39):
(i) Economic exploitation, including child labour (art. 32);
(ii) Drug abuse (art. 33);
(iii) Sexual exploitation and sexual abuse (art. 34);
(iv) Other forms of exploitation (art. 36);
(v) Sale, trafficking and abduction (art. 35);
(d) Children belonging to a minority or an indigenous group (art. 30);
(e) Children living or working on the street.
39. In relation to article 22, reports should also provide information on the international conventions and other relevant instruments to which the State is party, including those relating to international refugee law, as well as relevant indicators identified and used; relevant programmes of technical cooperation and international assistance, as well as information on infringements that have been observed by inspectors and sanctions applied.
40. Reports should further describe the training activities developed for all professionals involved with the system of juvenile justice, including judges and magistrates, prosecutors, lawyers, law enforcement officials, immigration officers and social workers, on the provisions of the Convention and other relevant international instruments in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (General Assembly resolution 40/33), the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (General Assembly resolution 45/112) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113).
41. With regard to article 32, reports should also provide information on the international conventions and other relevant instruments to which the State is party, including in the framework of the International Labour Organization, as well as relevant indicators identified and used; relevant programmes of technical cooperation and international assistance developed, as well as information on infringements that have been observed by inspectors and sanctions applied.

IX. OPTIONAL PROTOCOLS TO THE CONVENTION ON THE RIGHTS OF THE CHILD

42. States Parties that have ratified one or both Optional Protocols to the Convention on the Rights of the Child - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography - should, after they have submitted their initial report for each of the two Optional Protocols (see respective guidelines, CRC/OP/AC/1 and CRC/OP/SA/1), provide detailed information about measures taken with regard to the recommendations made by the Committee in its concluding observations on the last report submitted to the Committee.

ANNEX

Annex to the General Guidelines regarding the form and contents of Periodic Reports to be submitted by States Parties under article 44, paragraph 1 (b), of the Convention

INTRODUCTION

1. In preparing their periodic reports States Parties should follow the General Guidelines regarding the form and content and include, as requested by the present annex, where appropriate, information and disaggregated statistical data and other indicators. In the present annex, references to disaggregated data include indicators such as age and/or age group, gender, location in rural/urban area, membership of minority and/or indigenous group, ethnicity, religion, disability or any other category considered appropriate.
2. Information and disaggregated data provided by States Parties should cover the reporting period since the consideration of their last report. They should also

explain or comment on significant changes that have taken place over the reporting period.

I. GENERAL MEASURES OF IMPLEMENTATION (arts. 4, 42 and 44, para. 6)

3. States Parties should provide statistical data on training provided on the Convention for professionals working with and for children, including, but not limited to:
(a) Judicial personnel, including judges and magistrates;
(b) Law enforcement personnel;
(c) Teachers;
(d) Health care personnel;
(e) Social workers.

II. DEFINITION OF THE CHILD (art. 1)

4. States Parties should provide disaggregated data as described in paragraph 1 above, on the number and proportion of children under 18 living in the State Party.

III. GENERAL PRINCIPLES (arts. 2, 3, 6 and 12)

Right to life, survival and development (art. 6)

5. It is recommended that States Parties provide data disaggregated as described in paragraph 1 above, on the death of those under 18:
(a) As a result of extrajudicial, summary or arbitrary executions;
(b) As a result of capital punishment;
(c) Due to illnesses, including HIV/AIDS, malaria, tuberculosis, polio, hepatitis and acute respiratory infections;
(d) As a result of traffic or other accidents;
(e) As the result of crime and other forms of violence;
(f) Due to suicide.

Respect for the views of the child (art. 12)

6. States Parties should provide data on the number of child and youth organizations or associations and the number of members that they represent.
7. States Parties should provide data on the number of schools with independent student councils.

IV. CIVIL RIGHTS AND FREEDOMS (arts. 7, 8, 13-17 and 37 (a))

Birth registration (art. 7)

8. Information should be provided on the number and percentage of children who are registered after birth, and when such registration takes place.

Access to appropriate information (art. 17)

9. The report should contain statistics on the number of libraries accessible to children, including mobile libraries.

The right not to be subjected to torture or other cruel inhuman or degrading treatment or punishment (art. 37 (a))

10. States Parties should provide data disaggregated as described in paragraph 1 above, and type of violation, on the:
(a) Number of children reported as victims of torture;
(b) Number of children reported as victims of other cruel, inhuman or degrading treatment or other forms of punishment, including forced marriage and female genital mutilation;
(c) Number and percentage of reported violations under both (a) and (b) which have resulted in either a court decision or other types of follow-up;
(d) Number and percentage of children who received special care in terms of recovery and social reintegration;
(e) Number of programmes implemented for the prevention of institutional violence and amount of training provided to staff of institutions on this issue.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

Family support (arts. 5 and 18, paras. 1 and 2)

11. States Parties should provide data disaggregated as described in paragraph 1, above, on the:
(a) Number of services and programmes aimed at rendering appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and the number and percentage of children and families that benefit from these services and programmes;
(b) Number of available childcare services and facilities and the percentage of children and families that have access to these services.

Children without parental care (arts. 9, paras. 1-4, 21 and 25)

12. With reference to children separated from parents, States Parties should provide data disaggregated as described in paragraph 1, above, on the:
(a) Number of children without parental care disaggregated by causes (i.e. due to armed conflict, poverty, abandonment as a result of discrimination, etc.);
(b) Number of children separated from their parents as a result of court decisions (*inter alia*, in relation to situations of detention, imprisonment, exile or deportation);
(c) Number of institutions for these children disaggregated by region, number of places available in these institutions, ratio of caregivers to children and number of foster homes;
(d) Number and percentage of children separated from their parents who are living in institutions or with foster families as well as the duration of placement and frequency of its review;
(e) Number and percentage of children reunited with their parents after a placement;
(f) Number of children in domestic (formal and informal) and intercountry adoption programmes disaggregated by age and with information on the country of origin and of adoption for the children concerned.

Family reunification (art. 10)

13. States Parties should provide data disaggregated by gender, age, national and ethnic origin on the number of children who entered or left the country for the purpose of family reunification, including the number of unaccompanied refugee and asylum-seeking children.

Illicit transfer and non-return (art. 11)

14. States Parties should provide data disaggregated as described in paragraph 1, above, as well as by national origin, place of residence, family status on the:
(a) Number of children abducted from and to the State Party;
(b) Number of perpetrators arrested and percentage of those that were sanctioned in (criminal) courts.
Information on the relationship between the child and the perpetrator of the illicit transfer should also be included.

Abuse and neglect (art. 19), Including physical and psychological recovery and social reintegration (art. 39)

15. States Parties should provide data disaggregated as described in paragraph 1, above, on the:
(a) Number and percentage of children reported as victims of abuse and/or neglect by parents or other relatives/caregivers;
(b) Number and percentage of those cases reported that resulted in sanctions or other forms of follow-up for perpetrators;
(c) Number and percentage of children who received special care in terms of recovery and social reintegration.

VI. BASIC HEALTH AND WELFARE

Children with disabilities (art. 23)

16. States Parties should specify the number and percentage of children with disabilities disaggregated as described in paragraph 1, above, as well as by nature of disability:
(a) Whose parents receive special material or other assistance;
(b) Who are living in institutions, including institutions for mental illnesses, or outside their families, such as in foster care;
(c) Who are attending regular schools;
(d) Who are attending special schools.

Health and health services (art. 24)

17. States Parties should provide data disaggregated as described in paragraph 1, above, on the:
(a) Rates of infant and under-five child mortality;
(b) Proportion of children with low birth weight;
(c) Proportion of children with moderate and severe underweight, wasting and stunting;
(d) Percentage of households without access to hygienic sanitation facilities and access to safe drinking water;
(e) Percentage of one-year-olds fully immunized for tuberculosis, diphtheria, pertussis, tetanus, polio and measles;
(f) Rates of maternal mortality, including its main causes;
(g) Proportion of pregnant women who have access to, and benefit from, prenatal and post-natal health care;
(h) Proportion of children born in hospitals;

(i) Proportion of personnel trained in hospital care and delivery;
(j) Proportion of mothers who practice exclusive breastfeeding and for how long.
18. States Parties should provide data disaggregated as described in paragraph 1, above, on the:
(a) Number/percentage of children infected by HIV/AIDS;
(b) Number/percentage of children who receive assistance including medical treatment, counselling, care and support;
(c) Number/percentage of these children living with relatives, in foster care, in institutions, or on the streets;
(d) Number of child-headed households as a result of HIV/AIDS.
19. Data should be provided with regard to adolescent health on:
(a) The number of adolescents affected by early pregnancy, sexually transmitted infections, mental health problems, drug and alcohol abuse, disaggregated as described in paragraph 1, above;
(b) Number of programmes and services aimed at the prevention and treatment of adolescent health concerns.

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

Education, including vocational training (art. 28)

20. Data disaggregated as described in paragraph 1, above, should be provided in respect of:
(a) Literacy rates of children and adults;
(b) Enrolment and attendance rates for primary and secondary schools and vocational training centres;
(c) Retention rates and percentage of dropout for primary and secondary schools and vocational training centres;
(d) Average teacher/pupil ratio, with an indication of any significant regional or rural/urban disparities;
(e) Percentage of children in the non-formal education system;
(f) Percentage of children who attend preschool education.

VIII. SPECIAL PROTECTION MEASURES

Refugee children (art. 22)

21. States Parties should provide data disaggregated as described in paragraph 1, above, as well as country of origin, nationality and accompanied or unaccompanied status on the:
(a) Number of internally displaced, asylum-seeking, unaccompanied and refugee children;
(b) Number and percentage of such children attending school and covered by health services.

Children in armed conflicts (art. 38), Including physical and psychological recovery and social reintegration (art. 39)

22. States Parties should provide data disaggregated as described in paragraph 1, above, on the:
(a) Number and percentage of persons under 18 who are recruited or enlist voluntarily in the armed forces and proportion of those who participate in hostilities;
(b) Number and percentage of children who have been demobilized and reintegrated into their communities; with the proportion of those who have returned to school and been reunified with their families;
(c) Number and percentage of child casualties due to armed conflict;
(d) Number of children who receive humanitarian assistance;
(e) Number of children who receive medical and/or psychological treatment as a consequence of armed conflict.

The administration of juvenile justice (art. 40)

23. States Parties should provide appropriate disaggregated data (as described in paragraph 1, above, including by type of crime) on the:
(a) Number of persons under 18 who have been arrested by the police due to an alleged conflict with the law;
(b) Percentage of cases where legal or other assistance has been provided;
(c) Number and percentage of persons under 18 who have been found guilty of an offence by a court and have received suspended sentences or have received punishment other than deprivation of liberty;
d) Number of persons under 18 participating in probation programmes of special rehabilitation;
(e) Percentage of recidivism cases.

Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (art. 37 (b)-(d))

24. States Parties should provide appropriate disaggregated data (as described in paragraph 1, above, including by social status, origin and type of crime) on children in conflict with the law in respect of the:
(a) Number of persons under 18 held in police stations or pre-trial detention after having been accused of committing a crime reported to the police, and the average length of their detention;
(b) Number of institutions specifically for persons under 18 alleged as, accused of, or recognized as having infringed the penal law;
(c) Number of persons under 18 in these institutions and average length of stay;
(d) Number of persons under 18 detained in institutions that are not specifically for children;
(e) Number and percentage of persons under 18 who have been found guilty of an offence by a court and have been sentenced to detention and the average length of their detention;
(f) Number of reported cases of abuse and maltreatment of persons under 18 occurring during their arrest and detention/imprisonment.

Economic exploitation of children, including child labour (art. 32)

25. With reference to special protection measures, States Parties should provide statistical disaggregated data as described in paragraph 1, above, on the:
(a) Number and percentage of children below the minimum age of employment who are involved in child labour as defined by the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182) of the International Labour Organization disaggregated by type of employment;
(b) Number and percentage of those children with access to recovery and reintegration assistance, including free basic education and/or vocational training.

Drug and substance abuse (art. 33)

26. Information is to be provided on:
(a) The number of child victims of substance abuse;
(b) The number that are receiving treatment, assistance and recovery services.

Sexual exploitation, abuse and trafficking (art. 34)

27. States Parties should provide data disaggregated as described in paragraph 1, above, as well as by types of violation reported on the:
(a) Number of children involved in sexual exploitation, including prostitution, pornography and trafficking;
(b) Number of children involved in sexual exploitation, including prostitution, pornography and trafficking, who were provided access to rehabilitation programmes;
(c) Number of cases of commercial sexual exploitation, sexual abuse, sale of children, abduction of children and violence against children reported during the reporting period;
(d) Number and percentage of those that have resulted in sanctions, with information on the country of origin of the perpetrator and the nature of the penalties imposed;
(e) Number of children trafficked for other purposes, including labour;
(f) Number of border and law enforcement officials who have received training, with a view to preventing trafficking of children and to respect their dignity.

Guidelines regarding initial reports to be submitted by States Parties under article 8 (1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Adopted by the Committee at its 736th meeting (twenty-eighth session) on 3 October 2001

I ntroduction

Pursuant to article 8, paragraph 1 of the Optional Protocol, States Parties shall, within two years following the entry into force of this Protocol for the State Party concerned, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Optional Protocol. Thereafter, pursuant to article 8, paragraph 2 of the Optional Protocol, States Parties shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44, paragraph 1(b) of the Convention any further information with respect to the implementation of the Optional Protocol. States Parties to the Optional Protocol, who are not parties to the Convention, shall submit a report every five years, after the submission of the comprehensive report.

The Committee may, in the light of article 8, paragraph 3 of the Optional Protocol, request from States Parties further information relevant to the implementation of the Optional Protocol.

Reports should provide information on the measures adopted by the State Party to give effect to the rights set forth in the Optional Protocol and on the progress made in the enjoyment of those rights and should indicate the factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the Optional Protocol.

Copies of the principal legislative texts and judicial decisions, administrative and other relevant instructions to the armed forces, both of a civil and military character, as well as detailed statistical information, indicators referred therein and relevant research should accompany reports. In reporting to the Committee, States Parties should indicate how the implementation of the Optional Protocol is in line with the general principles of the Convention on the Rights of the Child, namely non-discrimination, best interests of the child, right to life, survival and development, and respect for the views of the child. Moreover, the process of preparation of the report should be described to the Committee, including the involvement of governmental and non-governmental organizations/bodies in its drafting and dissemination. Finally, reports should indicate the date of reference used when determining whether or not a person is within an age limit (for instance, the date of birth of the person concerned or the first day of the year during which the person concerned reaches that age limit).

Article 1

Please provide information on all measures taken, including of a legislative, administrative or other nature, to ensure that members of the armed forces who have not attained the age of 18 years do not take a direct part in hostilities. In this respect, please provide information notably on:

The meaning of "direct participation" in the legislation and practice of the State concerned;

The measures taken to avoid that a member of the armed forces who has not attained the age of 18 years is deployed or maintained in an area where hostilities are taking place and the obstacles encountered in applying these measures;

When relevant, disaggregated data on members of the armed forces below the age of 18 years who were made prisoners, whereas they did not directly participate in hostilities;

Article 2

Please indicate all the measures taken including of a legislative, administrative or other nature, to ensure that persons who have not attained the age 18 years are not compulsorily recruited into the armed forces. In this regard, reports should indicate among others:

Detailed information on the process of compulsory recruitment (i.e. from registration up to the physical integration into the armed forces) indicating the minimum age linked to each step and, at what time in that process, recruits become members of the armed forces;

The reliable documents to verify age, which are required prior to acceptance into compulsory military service (birth certificate, affidavit, etc.);

Any legal provision enabling the age of conscription to be lowered in exceptional circumstances (e.g. state of emergency). In this respect, please provide information on the age it can be lowered to, the process and the conditions for that change.

For States Parties where compulsory military service has been suspended but not abolished, the minimum age of recruitment set up in the previous regime and how, and under what conditions, this previous system can be reinstalled.

Article 3, para. 1

Reports should notably indicate:

The minimum age set out for voluntary recruitment into the armed forces, in accordance with the declaration submitted upon

ratification or accession or any change thereafter;
When relevant, disaggregated data on children below the age of 18 years voluntarily recruited into the national armed forces (for example, by gender, age, region, rural/urban areas and social and ethnic origin, and military ranks);
When relevant, pursuant to article 38, paragraph 3 of the Convention on the Rights of the Child, the measures taken to ensure that in recruiting those persons who have attained the minimum age set out for voluntary recruitment but who have not attained the age of 18 years, priority is given to those who are the oldest. In this respect, please provide information on the measures of special protection adopted for the under-18-years-old recruits.

Article 3, paras. 2 and 4

Reports should notably provide information on:
The debate which has taken place in the State concerned prior to the adoption of the binding declaration and the people involved in that debate;
When relevant, the national [or regional, local, etc.] debates, initiatives or any campaign aiming at strengthening the declaration if it set out a minimum age lower than 18 years.

Article 3, para. 3

With regard to the minimum safeguards that States Parties shall maintain concerning voluntary recruitment, reports should provide information on the implementation of these safeguards and indicate among others:
A detailed description of the procedure used for such recruitment from the expression of intention to volunteer until the physical integration into the armed forces;
Medical examination foreseen before recruitment of volunteers;
The reliable documentation used to verify the age of the volunteers (birth certificate, affidavit, etc.);
Information that is made available to the volunteers, and to their parents or legal guardians allowing them to formulate their own opinion and to make them aware of the duties involved in the military service. A copy of any materials used for this information to be annexed to the report;
The effective minimum service time and the conditions for early discharge; the use of military justice or discipline to under-18-years recruits and disaggregated data on the number of such recruits under-trial or in detention; the minimum and maximum sanctions foreseen in case of desertion;
The incentives used by the national armed forces for encouraging volunteers to join the ranks (scholarships, advertising, meetings at schools, games, etc.).

Article 3, para. 5

Reports should indicate, among others, information on:
The minimum age of entry into schools operated by or under the control of the armed forces;
Disaggregated data on schools operated by or under the control of the armed forces, including numbers, type of education provided, proportion between academic education and military training in the curricula; length of this education; academic/military personnel involved, educational facilities, etc.;
The inclusion in the school curricula of human rights and humanitarian principles, including in areas relevant to the realization of the rights of the child;
Disaggregated data on the students in these schools (for example, by gender, age, region, rural/urban areas and social and ethnic origin); their status (members or not of the armed forces); their military status in the case of a mobilisation or of an armed conflict, a genuine military need or any other emergency situation; their right to leave such schools at any time and not to pursue a military career;
All appropriate measures taken, to ensure that school discipline is administered in a manner consistent with the child's human dignity and any complaint mechanisms available in this regard.

Article 4

Please provide information on, *inter alia*:
The armed groups operating on/from the territory of the State concerned or with sanctuary on that territory;
Update on the status of the negotiations of the State Party with armed groups;
Disaggregated data on children who have been recruited and used in hostilities by the armed groups, and on those who have been arrested by the State concerned (for example, by gender, age, region, rural/urban areas and social and ethnic origin, time spent in the armed groups, and time spent in hostilities);
Any written or oral commitment made by armed groups aiming at not recruiting and using children below the age of 18 years in hostilities;
Measures adopted by the state concerned aiming at raising awareness amongst armed groups and within the communities of the need to prevent recruitment of children below the age of 18 years and of their legal duties with regard to the minimum age set up in the Optional Protocol for recruitment and use in hostilities;
The adoption of legal measures which aim at prohibiting and criminalizing the recruitment and use in hostilities of children under the age of 18 years by such armed groups and the judicial decisions applying to this issue;
The programmes to prevent notably children who are at highest risk of recruitment or use by such armed groups, such as refugee and internally displaced children, street children, orphans (e.g. birth registration campaigns) from being recruited or used by armed groups.

Article 5

Please indicate any provision of the national legislation and of international instruments and international humanitarian law applicable in the State concerned, which are more conducive to the realization of the rights of the child. Reports should also provide information on the status of ratification by the State concerned of the main international instruments concerning children in armed conflict and on other commitments undertaken by that State concerning this issue.

Article 6, paras. 1 and 2

Please indicate the measures adopted to ensure the effective implementation and enforcement of the provisions of the Optional Protocol within the jurisdiction of the State Party, including information on:
Any review of domestic legislation and amendments introduced into it;
The legal status of the Optional Protocol in national law and its applicability before domestic jurisdictions, as well as, when relevant, the intention of the State Party to withdraw existing reservations made to this Protocol;
The competent governmental departments or bodies responsible for the implementation of the Optional protocol and their coordination with regional and local authorities as well as with civil society;
The mechanisms and means used for monitoring and periodically evaluating the implementation of the Optional Protocol;
Measures adopted to ensure the relevant training of peacekeeping personnel on the rights of the child, including the provisions of the Optional Protocol;
The dissemination in all relevant languages of the Optional Protocol to all children and adults, notably those responsible for military recruitment, and the appropriate training offered to all professional groups working with and for children.

Article 6, para. 3

When relevant, please indicate all measures adopted with regard to disarmament, demobilization (or release from service) and to the provision of appropriate assistance for the physical and psychological recovery and social reintegration of children, taking due account of the specific situation of girls, including information on:
Disaggregated data on children involved in that proceeding, on their participation in such programmes, and on their status with regard to the armed forces and armed groups (e.g. when do they stop to be members of the armed forces or groups?);
The budget allocated to these programmes, the personnel involved and their training, the organizations concerned, cooperation among them, and participation of civil society, local communities, families, etc.;
The various measures adopted to ensure the social reintegration of children, e.g. interim care, access to education and vocational training, reintegration in the family and community, relevant judicial measures, while taking into account the specific needs of children concerned depending notably on their age and sex.
The measures adopted to ensure confidentiality and protection of children involved in such programmes from media exposure and exploitation;
The legal provisions adopted criminalizing the recruitment of children and the inclusion of that crime in the competence of any

specific justice seeking mechanisms established in the context of conflict (e.g. war crimes tribunal, truth and reconciliation bodies). The safeguards adopted to ensure that the rights of the child as a victim and as a witness are respected in these mechanisms in light of the Convention on the Rights of the Child;
The criminal liability of children for crimes they may have committed during their stay with armed forces or groups and the judicial procedure applicable, as well as safeguards to ensure that the rights of the child are respected;
When relevant, the provisions of peace agreements dealing with the disarmament, demobilization and/or physical and psychological recovery and social reintegration of child combatants.

Article 7

Reports should provide information on cooperation in the implementation of the Optional Protocol, including through technical cooperation and financial assistance. In this regard, reports should provide information, *inter alia*, on the extent of the technical cooperation or financial assistance, which the State Party has requested or offered. Please indicate, if the State Party is in a position of providing financial assistance, the existing multilateral, bilateral or other programs that have been undertaken for that assistance.

Revised Guidelines regarding initial reports to be submitted by States Parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Adopted by the Committee at its forty-third session, on 29 September 2006

Introduction

Pursuant to article 12, paragraph 1, of the Optional Protocol, each State party shall, within two years following the entry into force of the Protocol for that State party, submit a report to the Committee on the Rights of the Child ("the Committee") containing comprehensive information on the measures it has taken to implement the provisions of the Protocol. Thereafter, pursuant to article 12, paragraph 2, of the Protocol, States parties having submitted their initial report under this Protocol shall include in the reports they submit to the Committee in accordance with article 44, paragraph 1 (b), of the Convention any further information with respect to the implementation of the Optional Protocol. States parties to the Optional Protocol that are not parties to the Convention shall submit a report within two years following the entry into force of the Protocol and then every five years.

Guidelines regarding initial reports to be submitted by States parties under article 12, paragraph 1, of the Optional Protocol were adopted by the Committee at its 777th meeting, on 1 February 2002. The process of reviewing the reports received has led the Committee to adopt revised guidelines, in order to assist the States parties that have not yet reported to better understand the kind of information and data it considers necessary to understand and evaluate the progress made by States parties in implementing their obligations and to enable it to provide them with appropriate observations and recommendations.

The revised guidelines are divided into eight sections. Section I contains general guidelines about the reporting process, section II concerns data and section III concerns general measures of implementation relevant to this Protocol. Sections IV to VIII concern the substantive obligations recognized by the Protocol: section IV concerns the prevention of the sale of children, child prostitution and child pornography; section V concerns the criminalization of these practices and related matters; section VI concerns protection of the rights of child victims; section VII concerns international assistance and cooperation; and section VIII concerns other relevant provisions of national or international law.

The Committee particularly wants to draw attention of the States parties to the annex to these guidelines, which provides additional guidance on some issues and further indications as to the information needed for a comprehensive report of the States parties on the implementation of this Protocol.

I. GENERAL GUIDELINES

1. Reports submitted pursuant to article 12, paragraph 1, of the Protocol should contain a description of the process of preparation of the report, including the contributions made by governmental and non-governmental organizations/bodies in its drafting and dissemination. Reports of federal States and States having dependent territories or autonomous regional governments, should contain summarized and analytical information on how they contributed to the report.

2. Reports should indicate how the general principles of the Convention, namely non-discrimination, the primacy of best interests of the child, the rights to life, survival and development, and respect for the views of the child, have been taken into account in the design and implementation of the measures adopted by the State party under the Protocol (see annex).

3. Since the Protocol is intended to further implementation of the Convention on the Rights of the Child, in particular articles 1, 11, 21, 32, 34, 35 and 36, reports submitted pursuant to article 12 of the Protocol should indicate how and to what extent the measures taken in order to implement the Protocol have contributed to the implementation of the Convention, in particular the articles listed above.

4. Reports should contain information on the legal status of the Protocol in the internal law of the State party, and its applicability in all relevant domestic jurisdictions.

5. States parties also are invited to include in the reports, when relevant, information about the intention of the State party to withdraw any reservation(s) it has made to the Protocol.

6. Reports should include, in addition to information on the measures taken to implement the Protocol:

(a) Information, including relevant quantifiable data where available, on the progress made in eliminating the sale of children, child prostitution and child pornography and in ensuring the protection and enjoyment of the rights set forth in the Protocol;

(b) An analysis of the factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the Protocol; and

(c) Information from all autonomous regions or territories in the State party in a

summarized version (full texts of the information concerning such entities may be annexed to the report).
7. Reports should accurately describe the implementation of the Protocol with regard to all territories and persons over which the State party exercises jurisdiction, including all parts of federal States, dependent or autonomous territories, all military forces of the State party and all locations where such forces exercise de facto effective control.
8. States parties are invited to submit, together with their reports under article 12, copies of the principal legislative, administrative and other relevant texts, judicial decisions and relevant studies or reports.

II. DATA

9. Data included in the reports submitted pursuant to article 12 of the Protocol should be disaggregated, to the extent possible, by sex, region, age and by nationality and ethnicity, if relevant, and any other criteria that the State party considers relevant and that would help the Committee come to a more accurate understanding of the progress made in implementing the Protocol and any remaining gaps or challenges. The report should also contain information on the mechanisms and procedures used to collect these data.
10. Reports should summarize available data on the incidence of sale of children in the State party, including:
(a) The sale or transfer of children for purposes of sexual exploitation;
(b) The transfer of the organs of children for profit;
(c) The engagement of children in forced labour (see annex);
(d) The number of children adopted through the efforts of intermediaries using methods incompatible with article 21 of the Convention or other applicable international standards;
(e) Any other form of sale of children that occurs within the State party, including any traditional practices that involve the transfer of a child by any person or group of persons to another for any form of consideration, and any available indicators of the number of children affected by such practices;
(f) The number of child victims of trafficking - whether within the territory of the State party, from the territory of the State party to other States or from other States to the territory of the State party – including information as to the type of exploitation for which such children are trafficked (see annex); and
(g) The data provided should also show increase or decrease in these practices over time, when possible.
11. Reports should summarize available data concerning child prostitution, including:
(a) The number of persons under the age of 18 engaged in prostitution in the State party;
(b) The increase or decrease of child prostitution or any specific forms of child prostitution over time (see annex); and
(c) The extent to which child prostitution is linked to sex tourism within the territory of the State party, or the State party has detected within its territory efforts to promote sex tourism involving child prostitution in other countries.
12. Reports should summarize available information concerning the extent to which pornography featuring persons actually or apparently under the age of 18, is produced, imported, distributed or consumed within the territory of the State party and any increases or decreases in the production, importation, distribution or consumption of child pornography that have been measured or detected, including:
(a) Photographs and other printed materials;
(b) Videos, motion pictures and electronically recorded materials;
(c) Internet sites containing photographs, videos, motion pictures or animated productions (e.g. cartoons) depicting, offering or advertising child pornography; and
(d) Live performances.
The report should contain any available data concerning the number of prosecutions and convictions for such offences, disaggregated by nature of offence (sale of children, child prostitution or child pornography).

III. GENERAL MEASURES OF IMPLEMENTATION

13. Reports submitted should contain information on:
(a) All laws, decrees and regulations adopted by the national, State or regional legislatures or other competent bodies of the State party in order to give effect to the Protocol (see annex);
(b) Any significant jurisprudence adopted by the courts of the State party with regard to the sale of children, child prostitution and child pornography, in particular jurisprudence that applies the Convention, the Protocol or related international instruments referred to by these guidelines;
(c) The governmental departments or bodies having primary responsibility for the implementation of this Protocol and the mechanism(s) that have been established or are used to ensure coordination between them and the relevant regional and local authorities, as well as with civil society, including the business sector, the media and academia;
(d) The dissemination of the Protocol and the appropriate training offered to all relevant professional and para-professional groups, including immigration and law enforcement officers, judges, social workers, teachers and legislators;
(e) The mechanisms and procedures used to collect and evaluate data and other information concerning implementation of this Protocol on a periodic or continuing basis;
(f) The budget allocated to the various activities of the State party related to implementation of the present Protocol;
(g) The overall strategy of the State party for the elimination of the sale of children, child prostitution and child pornography and the protection of victims, and any national or regional plans, or particularly significant local ones, that have been adopted in order to strengthen efforts to implement this Protocol, or any components of plans for advancing the rights of the child, the rights of women or human rights that contain components aimed at the elimination of these practices or protection of victims;
(h) The contributions made by civil society to efforts to eliminate the sale of children, child prostitution and child pornography; and
(i) The role played by statutory ombudspersons for children or similar autonomous public institutions for the rights of children, if any, in implementing this Protocol or in monitoring its implementation (see annex).

IV. PREVENTION (art. 9, paras. 1 and 2)

14. Bearing in mind that article 9, paragraph 1, of the Protocol requires States parties to pay "particular attention" to the protection of children who are "especially vulnerable" to the sale of children, child prostitution or pornography, reports should describe the methods used to identify children who are especially vulnerable to such practices, such as street children, girls, children living in remote areas and those living in poverty. In addition, they should describe the social programmes and policies that have been adopted or strengthened to protect children, in particular especially vulnerable children, from such practices (e.g. in the areas of health and education), as well as any administrative or legal measures (other than those described in response to the guidelines contained in section V) that have been taken to protect children from these practices, including civil registry practices aimed at preventing abuse. Reports also should summarize any available data as to the impact of such social and other measures.
15. Reports should describe any campaigns or other measures that have been taken to promote public awareness of the harmful consequences of the sale of children and child prostitution and pornography, as required by article 9, paragraph 2, of the Protocol, including:
(a) Measures specifically aimed at making children aware of the harmful consequences of such practices, and of resources and sources of assistance intended to prevent children from falling victim to them;
(b) Programmes targeting any specific groups other than children and the general public (e.g. tourists, transportation and hotel workers, adult sex workers, members of the armed forces, correctional personnel);
(c) The role played by NGOs, the media, the private sector and the community, in particular children, in the design and implementation of the awareness measures described above; and
(d) Any steps taken to measure and evaluate the effectiveness of the measures described above, and the results obtained.

V. PROHIBITION AND RELATED MATTERS (arts. 3; 4, paras. 2 and 3; 5; 6 and 7)

16. Reports should provide information on all criminal or penal laws in force covering and defining the acts and activities enumerated in article 3, paragraph 1, of the Protocol, including:

(a) The material elements of all such offences, including any reference to the age of the victim and the sex of the victim or perpetrator;
(b) The maximum and minimum penalties that can be imposed for each of these offences (see annex);
(c) Any defences and aggravating or attenuating circumstances applicable specifically to these offences;
(d) The statute of limitations for each of these offences;
(e) Any other offences recognized by the laws of the State party that it considers relevant to implementation of the present Protocol (see annex); and
(f) The sentences applicable under the law(s) of the State party for attempts to commit and complicity or participation in the offences described in response to this guideline.

17. Reports also should indicate any provisions of the law in force that the State party considers an obstacle to implementation of the present Protocol, and any plans it has to review them.

18. Reports should describe any law concerning the criminal liability of legal persons for the acts and activities enumerated in article 3, paragraph 1, of the Protocol, and comment on the effectiveness of such laws as a deterrent to the sale of children, child prostitution and child pornography; if the law of the State party does not recognize the criminal liability of legal persons for such offences, the report should explain why this is so and the position of the State party on the feasibility and desirability of modifying it (see annex).

19. Reports of States parties whose law permits adoption should indicate the bilateral and multilateral agreements, if any, that are applicable and the measures it has taken to ensure that all persons involved in the adoption of children act in conformity with such agreements and with the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children (General Assembly resolution 41/85 of 3 December 1986), including:
(a) The legal and other measures taken to prevent illegal adoptions, e.g. those that have not been authorized by the authorities competent for dealing with domestic and intercountry adoptions;
(b) The legal and other measures taken to prevent intermediaries from attempting to persuade mothers or pregnant women to give their children for adoption, and to prevent unauthorized persons or agencies from advertising services concerning adoption;
(c) The regulations and licensing of agencies and individuals acting as intermediaries in adoptions, as well as legal practices identified so far;
(d) The legal and administrative measures taken to prevent the theft of young children and to prevent fraudulent birth registration, including applicable criminal sanctions;
(e) The circumstances in which the consent of a parent for adoption can be waived and any safeguards in place that are designed to ensure that consent is informed and freely given; and
(f) Measures to regulate and limit the fees charged by agencies, services or individuals in connection with adoption and the sanctions applicable for non-compliance with them.

20. States parties to this Protocol that recognize adoption and that are not parties to the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption are invited to indicate whether they have considered becoming parties to it and the reasons they have not yet done so.

21. Reports should indicate:
(a) The laws in force prohibiting the production and dissemination of material advertising any of the offences described in the Protocol;
(b) The applicable sanctions;
(c) Any available data or information concerning the number of prosecutions and convictions for such offences, disaggregated by nature of the offence (sale of children, child prostitution or child pornography); and
(d) Whether such laws are effective in preventing advertising for the sale of children, child prostitution and child pornography and, if not, the reasons why and any plans the State has for strengthening such laws and/or their enforcement.

22. Reports should indicate the legal provisions that establish jurisdiction over the offences referred to in article 3 of the Protocol, including information about the grounds for this jurisdiction (see article 4, paragraphs 1 and 3).

23. Reports also should indicate the legal provisions that establish extraterritorial jurisdiction over such offences on the grounds mentioned in article 4, paragraph 2, and/or on any other grounds of jurisdiction recognized by the law of the State party.

24. Reports should describe the law, policy and practice of the State party concerning the extradition of persons accused of having committed one or more of the offences referred to by article 3 of the Protocol, including:
(a) Whether extradition requires the existence of an extradition treaty with the requesting State and, if not, any conditions applied in considering requests for extradition (e.g. reciprocity);
(b) If extradition is conditional on the existence of an extradition treaty in force for the State party and a requesting State, whether the competent authorities of the State party recognize article 5, paragraph 2, as sufficient basis for granting an extradition request made by another party to this Protocol, including in cases in which the extradition request concerns a national of the State receiving the request;
(c) Whether the State party has entered into any extradition treaties since becoming a party to this Protocol or is negotiating any extradition treaties and, if so, whether such treaties recognize the offences corresponding to those referred to in the Protocol as extraditable offences;
(d) Whether the State party, since the entry into force of the Protocol, has refused any request(s) for the extradition of a person subject to its jurisdiction who was accused by another State of any of the offences referred to in the present Protocol and, if so, the reason for the refusal(s) to extradite, and whether the person(s) concerned was referred to the competent authorities of the State party for prosecution;
(e) The number of requests for extradition for any of the offences referred to the Protocol that have been granted by the State party since the entry into force of the Protocol or since its most recent report on implementation of the Protocol, disaggregated by the nature of the offences;
(f) Whether the State party has, since the entry into force of the Protocol, requested the extradition of any person accused of any of the offences referred to in this Protocol and, if so, whether such request(s) have been honoured by the requested State(s); and
(g) Whether any new legislation, regulations or judicial rules concerning extradition have been proposed, drafted or adopted and, if so, their consequences, if any, for the extradition of persons accused of offences corresponding to the conduct described in article 3 of this Protocol.

25. Reports should describe the legal basis, including international agreements, for cooperation with other States parties with regard to investigations and criminal and extradition proceedings brought with regard to the offences referred to by the Protocol, and the policy and practice of the State party with regard to such cooperation, including examples of cases in which it has cooperated with other States parties and any significant difficulties it has experienced in obtaining the cooperation of other States parties.

26. Reports should describe the law, policy and practice of the State party with regard to:
(a) The seizure and confiscation of materials, assets and or other goods used to commit or facilitate any of the offences set forth in the Protocol;
(b) The seizure and confiscation of proceeds derived from the commission of such offences; and
(c) The closure of premises used to commit such offences, including the execution of requests made by other States parties for the seizure and confiscation of any materials, assets, instrumentalities or proceeds described in article 7 (a) of the Protocol; the State party's experience concerning the response of other parties to its requests for the seizure and confiscation of goods and proceeds; any legislation concerning these matters that has been proposed, drafted or enacted since the entry into force of the Protocol, and any judicial decisions concerning these matters of particular significance.

VI. PROTECTION OF THE RIGHTS OF VICTIMS (arts. 8 and 9, paras. 3 and 4)

27. Reports should contain information on the measures adopted by the State party to implement article 8 of the Protocol with a view to ensure that the rights and best interests of children who have been the victims of the practices prohibited under

the present Protocol are fully recognized, respected and protected at all stages of criminal investigations and proceedings which concern them. States also may wish to describe any efforts made to implement the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime adopted by the Economic and Social Council in 2005 (see annex).

28. Reports should describe the law, policy and practice throughout the territory of the State party regarding the investigation of the offences referred to by the Protocol, in cases in which the victim appears to be below the age of 18 but his or her actual age is unknown (see annex).

29. Reports should describe any rules, regulations, guidelines or instructions that have been adopted by relevant authorities in order to ensure that the best interests of the child are a primary consideration in the treatment afforded by the criminal justice system to children who are victims of any of the offences described in the present Protocol (see annex).

30. Reports also should indicate which provisions of the existing laws, procedures and policies are meant to ensure that the best interests of child victims of such offences are adequately identified and taken into account in criminal investigations and proceedings and, if not, what steps it considers necessary or plans to take to improve compliance with article 8, paragraph 3, of the Protocol (see annex).

31. Reports should indicate what measures are taken to ensure legal, psychological or other training for those who work with victims of the offences prohibited in this Protocol (see annex).

32. Reports should indicate the measures in place that provide the agencies, organizations, networks and individuals with the conditions necessary to carry out their work without fear of interference or reprisals and, if not, what measures are planned or considered necessary to ensure compliance with article 8, paragraph 5, of the Protocol (see annex).

33. Reports should describe any special safeguards or compensatory measures that have been introduced or strengthened in order to ensure that measures designed to protect the rights of child victims of the offences referred to by this Protocol do not have any undue impact on the rights of accused persons to a fair and impartial trial (see annex).

34. Reports should describe existing public and private programmes that provide child victims of sale, prostitution and pornography with assistance in social reintegration, paying special attention to family reunification, and physical and psychological recovery (see annex).

35. Reports should also describe the measures taken by the State party to help the child recover his or her identity, when the exploitation to which the child has been exposed has adversely affected any elements of his or her identity, such as name, nationality and family ties (see annex).

36. Information contained in reports concerning assistance in social reintegration, physical and psychological recovery and the recovery of identity should indicate any differences between the assistance provided to children who are nationals or presumed to be nationals of the State party and those who are not nationals, or whose nationality is unknown (see annex).

37. Reports should contain information on existing remedies and procedures that may be used by child victims of sale, prostitution or pornography to seek compensation for damages from those legally responsible (see annex).

VII. INTERNATIONAL ASSISTANCE AND COOPERATION

38. Reports should describe:

(a) Any multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for any of the offences referred to by this Protocol that the State party has helped draft, or has negotiated, signed or become a party to;

(b) The steps that have been taken to put in place procedures and mechanisms to coordinate the implementation of such arrangements; and

(c) The results obtained through such arrangements, any significant difficulties encountered in implementing them and any efforts made or considered necessary to improve the implementation of such arrangements.

39. Reports also should describe any other steps taken by the State party to promote international cooperation and coordination concerning the prevention, detection, investigation, prosecution and punishment of the offences referred to by the Protocol between their authorities and relevant regional or international organizations, as well as between the authorities and national and international non-governmental organizations.

40. Reports should describe any steps taken by the State party to support international cooperation to assist the physical and psychological recovery, social reintegration and repatriation of the victims of the offences referred to by this Protocol, including bilateral aid and technical assistance, and support for the activities of international agencies or organizations, international conferences and international research or training programmes, including support for the relevant activities and programmes of national or international non-governmental organizations.

41. Reports should describe the contributions of the State party to international cooperation designed to address root causes that contribute to children's vulnerability to sale, prostitution, pornography and sex tourism, in particular poverty and underdevelopment.

VIII. OTHER LEGAL PROVISIONS (art. 11)

42. Reports should describe:

(a) Any provisions of domestic legislation in force in the State party that it considers more conducive to the realization of the rights of the child than the provisions of this Protocol;

(b) Any provisions of international law binding on the State party that it considers more conducive to the realization of the rights of the child than the provisions of this Protocol, or that it takes into account in applying the present Protocol; and

(c) The status of ratification by the State party of the main international instruments concerning sale of children, child prostitution, child pornography, trafficking of children and sex tourism, as well as any other international or regional commitments undertaken by that State concerning these issues, and any influence their implementation has had on implementation of the Protocol.

ANNEX

The link between the Optional Protocol and the implementation of the Convention referred to in **Guideline 2** (see paragraph 2 above; guidelines correspond to paragraph numbers) is recognized by the first paragraph of the preamble to the Protocol.

The term forced labour, referred to in **Guideline 10 (c)**, includes any substantial work or services that a person is obliged to perform, by a public official, authority or institution under threat of penalty; work or services performed for private parties under coercion (e.g. the deprivation of liberty, withholding of wages, confiscation of identity documents or threat of punishment) and slavery-like practices such as debt bondage and the marriage or betrothal of a child in exchange for consideration (see International Labour Organization Convention No. 29 (1930) on Forced Labour (arts. 2 and 11), and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (art. 1)).

Trafficking of children, as referred to in **Guideline 10 (f)**, means the recruitment, transportation, transfer, harbouring or receipt of persons under the age of 18 for the purpose of any form of exploitation, including sexual exploitation, the exploitation of child labour or adoption in violation of the relevant international standards, regardless of whether the children or their parents or guardian have expressed consent thereto (see the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (art. 3 (a), (b) and (c))).

Forms of prostitution that, according to **Guideline 11 (b)**, should be distinguished, if possible, include heterosexual and homosexual prostitution, and commercial or other forms of prostitution, such as the delivery of children to temples or religious leaders for the purpose of providing sexual services, sexual slavery, the solicitation by teachers of sexual favours from students and sexual exploitation of child domestic workers.

States may wish to present the information referred to in **Guideline 13 (a)** in the form of a table of relevant laws and their most relevant provisions.

The important role of children's ombudsmen and similar institutions, mentioned in **Guideline 13 (i)**, is described by the

Committee in general comment No. 2 on "The role of independent national human rights institutions in the promotion and protection of the rights of the child", adopted at its thirty-first session in 2002.

Information provided in response to the guidelines contained in section IV above, in particular in reports made by federal States, States having dependent territories and/or autonomous regions, and States whose legal order recognizes religious, tribal or indigenous law, should include information about the relevant law of all jurisdictions having competence over these matters, including the law applicable to the armed forces.

The reply to **Guideline 16**, especially its subparagraph (b), should distinguish between the penalties applicable to adults convicted of such offences and juveniles who have committed them. Article 3, paragraph 1, of the Protocol provides that States parties shall "as a minimum" ensure that the acts listed are covered by its criminal or penal law; the broader, generic obligation set forth in article 1 is to "prohibit the sale of children, child prostitution and child pornography".

Hence **Guideline 16 (e)** indicates that reports should indicate any other forms of sale, or any other acts or omissions concerning child prostitution or child pornography, that are covered by its criminal or penal law. In addition, in some countries certain crimes may be used to prosecute the sale of children, child prostitution or child pornography even though they do not expressly prohibit those offences as such. Reports also should describe such offences and explain their application to the sale of children, child prostitution and/or child pornography.

Legal persons, referred to in **Guideline 18**, are entities other than physical persons that have legal personality, such as corporations and other businesses, local or regional governments and legally recognized foundations, organizations and associations.

The applicable international legal instruments in **Guideline 19** include articles 20 and 21 of the Convention, read together with the general principles recognized by articles 2, 3, 6 and 12 of the Convention; the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, which the Committee considers an appropriate instrument for meeting the obligation contained in article 21 (e), of the Convention; the 1967 European Convention on the Adoption of Children (CETS No. 58); the 1990 African Charter on the Rights and Welfare of the Child; the Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, adopted by the General Assembly in 1986; and bilateral treaties on adoption. The Declaration on Social and Legal Principles, which is mentioned in the Preamble to the Convention on the Rights of the Child, is applicable to all States, including those that are not party to any of the treaties mentioned above.

The information referred to in **Guideline 27** should include, in particular:

(a) Any laws and other legal standards providing that the best interests of the child victim or child witness shall be a primary consideration in criminal justice matters concerning the sale of children, child prostitution and child pornography;

(b) Any laws or other legal standards, procedures and practices concerning the placement of children considered to be victims of sale, child prostitution or child pornography in protective custody in police or correctional facilities, or public child welfare facilities, during the duration of investigations or legal proceedings against the perpetrators of such acts, and information on the number of children placed in such custody for the duration of such investigations or proceedings, disaggregated if possible according to the age, sex and place of origin of the child, the nature of the facility and the average duration of placement;

(c) The principle that children shall not be deprived of liberty except as a last resort (see article 37 (b) of the Convention) means that child victims or witnesses should not be kept in police or correctional facilities nor, except in extreme circumstances, closed child welfare facilities, in order to ensure their protection and availability in criminal proceedings;

(d) Any laws, procedures and practices allowing the placement of children considered to be victims of sale, child prostitution or child pornography in the temporary care of relatives, foster parents, temporary guardians or community-based organizations during the investigations or legal proceedings against the perpetrators of such acts, and information on the number of children so placed, disaggregated if possible according to the age, sex and place of origin of the child, the type of care provider and the average duration of placement;

(e) Any legal standards that have been adopted recognizing the right of child victims of sale, child prostitution or child pornography to be informed about their legal rights and their potential role in criminal proceedings concerning such exploitation and the scope, timing and progress and outcome of such proceedings, and the practices and procedures that have been established in order to provide children with such information;

(f) Any legal standards that have been adopted that recognize the right of child victims of sale, child prostitution or child pornography to express or convey their views, needs and concerns about criminal proceedings concerning their exploitation and the duty of investigators, prosecutors and other relevant authorities to take their views and concerns into account; the methods and procedures used to ascertain the views, needs and concerns of child victims of different ages and backgrounds and to communicate them to the relevant authorities; and information regarding the progress made and difficulties encountered, if any, in implementation of such standards and procedures;

(g) Any programmes and services that provide support to child victims during criminal proceedings against those responsible for their exploitation, the geographical location and nature of the agencies or organizations responsible (public, subsidized or non-governmental), the nature of the support services provided and the coverage; any available data concerning the age, sex, place of origin and other relevant characteristics of the beneficiaries; the results of any evaluations of the support provided; and the views of the State party as to the adequacy of the coverage, scope and quality of the services available and any plans to expand them;

(h) Any laws or regulations designed to protect the right to privacy and prevent the disclosure of the identity of victims of any of the offences referred to in the Protocol, and any other measures taken by the State party to protect their privacy and prevent the disclosure of their identity, as well as the views of the State party on whether such laws, regulations and other measures are effective and, if not, the reasons why they are not and any plans it has to enhance the protection of their right to privacy and prevent the disclosure of their identity;

(i) The policies, procedures, programmes, protocols or other measures that have been put in place in order to ensure the safety of child victims of sale, prostitution or pornography who may be at risk of retaliation or intimidation and to ensure the safety of their families and of witnesses vulnerable to such risks, as well as the views of the State party on whether such measures have been effective and, if not, the reasons why they have not been and any plans it has to reinforce them, modify them or to adopt new safeguards; and

(j) Any laws, rules, regulations, guidelines or policies that have been adopted by the competent legislative, administrative or judicial authorities in order to avoid unnecessary delay in the disposition of cases involving the offences referred to by this Protocol and in the execution of orders or decrees granting compensation to child victims, as well as any jurisprudence that may have been adopted by the courts of the State party concerning the timely resolution of such matters.

The information referred to in **Guideline 28** should include, in particular:

(a) The measures used to estimate the age of the victim when documentary proof is not available;

(b) The standard of proof for the age of the victim and the legal presumptions, if any, that apply; and

(c) The agency or bodies that are responsible for carrying out investigations with a view to determining the age of the child and the methods used to this end. The information provided in response to Guideline 28 also should indicate whether difficulties in determining the age of presumed victims of the offences referred to by the Protocol to be a substantial obstacle to law enforcement and effective protection of children against such practices and, if so, why it does, and what plans, if any, the State party has to overcome them or what action it considers necessary to address such difficulties. Information provided also should

differentiate, when relevant, between offences that have been committed within the territory of a State party against a child who is a national, and offences in which the victim may not be a national of the State party or the act may have taken place in the territory of another State.

The information provided in response to **Guidelines 29 and 30** should:

(a) Indicate whether the legislation of all relevant jurisdictions of the State party recognizes the requirement that the best interests of the child shall be a primary consideration in the treatment afforded by the criminal justice system to children who are victims of any of the offences described in the Protocol and, if not, what steps, if any, the State party has taken or plans to take to incorporate this principle into the relevant legislation;

(b) Describe any rules, guidelines, policies or jurisprudence concerning how the best interests of children are defined in this context and the methods that are used to determine the best interests of individual child victims;

(c) Describe, in particular, any rules, regulations, guidelines, policies or jurisprudence concerning the methods used to determine the child's views and the weight given to such views in establishing what the best interests of the child are in this context;

(d) Describe, in addition, what steps have been taken and what mechanisms and procedures have been established to provide child victims with objective information, in language adapted to their age and background, about criminal investigations and proceedings regarding offences affecting them, their rights with regard to such investigations and proceedings, and any options or alternative courses of action they may have;

(e) Describe any legislation, regulations, procedures, policies and jurisprudence regarding the legal standing of children with regard to decisions that must be made regarding criminal proceedings concerning offences against them, including any age limit concerning the child's decision whether to testify or otherwise participate in proceedings; the authority of parents or guardians to take such decisions for the child, and the appointment of temporary guardians to ensure that the best interests of the child are identified and respected in the absence of any parent or guardian or in the event of a possible conflict of interest between the child victim and her or his parent(s) or legal guardian; and

(f) Describe the role, if any, of child protection agencies or child rights bodies in criminal proceedings concerning the offences referred to by the Protocol, in particular any role they may play in defending the best interests of the child victim or child witness in such proceedings.

Information requested under **Guideline 31** should provide details as to the agency or agencies that are competent to investigate and/or prosecute the offences referred to by the Protocol and the courts competent over these offences throughout the territory or territories of the State party, and whether contact with child victims and witnesses by the staff of such agencies is limited to officials assigned especially to cases concerning children; any specific requirements regarding education on the rights of children and child psychology or development applicable to the recruitment or appointment of staff having contact with children; any entry-level or in-service training programmes that provide staff having contact with children and their supervisors with legal, psychological and other relevant training designed to ensure that child victims receive treatment that is sensitive to their age, sex, background and experiences and respectful of their rights, and a brief description of the content and methodology of such training programmes; and the agencies or organizations, public or private, that provide care, shelter and psychosocial services to the victims of the offences referred to by this Protocol, and any applicable regulations concerning the qualifications and training of private service providers.

The information provided in response to **Guideline 32** should indicate the public or private agencies, organizations and networks most involved in efforts to prevent the sale of children, child prostitution and pornography and related practices, as well as those most involved in providing protection, rehabilitation and similar services to the victims of such practices; and describe any significant attacks or threats to the safety, security and integrity of the above-mentioned bodies and their members or staff, as well as the types of measures the State party has adopted to protect the persons or bodies that have been the target of attacks and threats of the kind mentioned above, and the measures or policies that have been adopted as a precaution against such threats or attacks.

For purposes of **Guideline 33**, the rights of accused persons to a fair and impartial trial should be considered to be the rights set forth in articles 14 and 15 of the International Covenant on Civil and Political Rights, in particular the right to be presumed innocent until proved guilty according to law, to have adequate facilities for the preparation of a defence and to examine, or have examined, the witnesses against him.

Information provided in response to **Guideline 34** should include: identification of programmes or services and the agencies or organizations that operate them, their geographical location and a description of the type of services provided; data on the number of children who receive such assistance, disaggregated according to the age and sex of the beneficiaries, the type of abuse suffered and whether the assistance is provided in a residential or non-residential setting; the results of any evaluation(s) that have been made of the assistance provided by existing programmes and information regarding the unmet demand for such services, if any; and any plans the State party has for increasing the capacity of existing programmes or expanding the type of services provided, as well as any other information that it considers relevant.

The right to assistance in social reintegration and psychological recovery referred to by **Guideline 35** and article 9, paragraph 3, of the Protocol includes the right of children deprived of any element of their identity to assistance in speedily re-establishing their identify, a right also recognized by article 8, paragraph 2, of the Convention on the Rights of the Child.

Information provided in response to **Guideline 36** should include:

(a) The number of children who are not nationals or whose nationality is unknown who are identified annually as victims of sale, child prostitution and child pornography, disaggregated to the extent possible by age, sex, type of exploitation and country of origin;

(b) The policy of the State party regarding the repatriation of child victims and reintegration with their families and community, including the way such policies address issues such as the best interests of the child, the right of the child to have his or her views taken into account, the child's participation in criminal proceedings against those responsible for his or her exploitation and the right of the child to protection against the risk of reprisals and to assistance in physical and psychological rehabilitation;

(c) Any existing legal or administrative agreements with other countries concerning the repatriation of children who have been victims of these forms of exploitation, mutual assistance in re-establishing their identity or relocating their families and for evaluating the appropriateness of return of the child to his or her family or community, as opposed to other forms of social reintegration; and

(d) Information on the progress made and difficulties encountered in safeguarding the right to social reintegration, identity and physical and psychological recovery of children who have been victims of these forms of exploitation and who are not nationals, or whose nationality is unknown, as well as any plans it may have for overcoming the difficulties encountered, if any.

The information provided in response to **Guideline 37** should include:

(a) Whether the child's right to compensation is subordinated to or conditioned by a prior finding of criminal responsibility on the part of those responsible for his or her exploitation;

(b) Procedures and standards regarding the appointment of a guardian or representative for the child for purposes of legal procedures of this kind, when there is an actual, possible or potential conflict between the interests of the child and those of his or her parents;

(c) Standards and procedures concerning the voluntary settlement of cases or complaints involving the sale of children, child prostitution or pornography;

(d) Whether there are any differences between the procedures applicable to cases involving children and those involving adults, insofar as the admissibility of evidence or the way evidence concerning the child victim is presented;

(e) Whether rules and guidelines concerning the management of cases recognize

the importance of the need to avoid undue delay in the resolution of cases involving children, in accordance with article 8, paragraph 1 (g), of the Protocol;
(f) Whether there is any difference in the statute of limitations applicable to claims of compensation for these forms of exploitation, when the victim is a child;
(g) Any special features of the law that concern the use, disposition and safeguarding of damages awarded to children until such time as they reach the age of majority;
(h) Any other special features of existing procedures that may be used by children to seek compensation in the type of cases referred to above that are designed to make them more sensitive to the special needs, rights and vulnerabilities of children;
(i) Whether the information given in reply to the preceding paragraphs of this guideline is applicable to victims who may not be nationals of the State party, and any special measure that may exist to ensure that victims who are not or may not be nationals have equal access to remedies designed to obtain compensation for damages due to the forms of exploitation referred to above;
(j) Any information concerning the number and amount of awards made to children for abuses of this kind, as a result of legal or administrative proceedings or settlements supervised by official bodies, that would help the Committee understand how existing remedies and procedures work in practice;
(k) Whether the State party considers that existing remedies and procedures provide adequate protection to the right of children who have been victims of the above forms of exploitation to obtain adequate compensation for damages and, if not, what improvements or changes it considers would enhance effective protection of this right. Damages include physical or mental injury, emotional suffering, prejudice to moral interests (e.g. honour, reputation, family ties, moral integrity), denial of one's rights, loss of property, income or other economic loss and expenses incurred in treating any injury and making whole any damage to the victim's rights (see principles 19 and 20 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law).

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Universal Declaration of Human Rights

Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

Preamble

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,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1
All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2
Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3
Everyone has the right to life, liberty and security of person.

Article 4
No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6
Everyone has the right to recognition everywhere as a person before the law.

Article 7
All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination

in violation of this Declaration and against any incitement to such discrimination.

Article 8
Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9
No one shall be subjected to arbitrary arrest, detention or exile.

Article 10
Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11
1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12
No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13
1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14
1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15
1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16
1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17
1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18
Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19
Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20
1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21
1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22
Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23
1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24
Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25
1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26
1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27
1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28
Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29
1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30
Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Declaration of the Rights of the Child

Proclaimed by General Assembly resolution 1386 (XIV) of 20 November 1959

Preamble

Whereas the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Whereas the United Nations has, in the Universal Declaration of Human Rights, proclaimed that everyone is entitled to all the rights and freedoms set forth therein, 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,

Whereas 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,

Whereas the need for such special safeguards has been stated in the Geneva Declaration of the Rights of the Child of 1924, and recognized in the Universal Declaration of Human Rights and in the statutes of specialized agencies and international organizations concerned with the welfare of children,

Whereas mankind owes to the child the best it has to give,

Now therefore,

The General Assembly

Proclaims this Declaration of the Rights of the Child to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national Governments to recognize these rights and strive for their observance by legislative and other measures progressively taken in accordance with the following principles:

Principle 1

The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

Principle 2

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

Principle 3

The child shall be entitled from his birth to a name and a nationality.

Principle 4

The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.

Principle 5

The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

Principle 6

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years

shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

Principle 7

The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society.

The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.

The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

Principle 8

The child shall in all circumstances be among the first to receive protection and relief.

Principle 9

The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

Principle 10

The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966
Entry into force: 23 March 197, in accordance with Article 49

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, 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,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, 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.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3
The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4
1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5
1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6
1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8
1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour;
(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
(iv) Any work or service which forms part of normal civil obligations.

Article 9
1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10
1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11
No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12
1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13
An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14
1. All persons shall be equal before the courts and tribunals. In the determination

of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
(c) To be tried without undue delay;
(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
(g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15
1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.
2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16
Everyone shall have the right to recognition everywhere as a person before the law.

Article 17
1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18
1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19
1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
(a) For respect of the rights or reputations of others;
(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20
1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21
The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22
1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23
1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24
1. Every 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.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

Article 25
Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:
(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
(c) To have access, on general terms of equality, to public service in his country.

Article 26
All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27
In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28
1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.
2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29
1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.
2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for renomination.

Article 30
1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.
2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.
3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.
4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31
1. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32
1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.
2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33
1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.
2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34
1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.
2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.
3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35
The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36
The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37
1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.
2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38
Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39
1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:
(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights: (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
(b) Thereafter whenever the Committee so requests.
2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.
3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.
4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.
5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:
(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;
(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;
(d) The Committee shall hold closed meetings when examining communications under this article;
(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;
(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;
(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:
(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.
2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;
(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.
2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.
3. The Commission shall elect its own Chairman and adopt its own rules of procedure.
4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.
5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.
6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.
7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:
(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;
(b) If an amicable solution to the matter on tie basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;
(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;
(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of

the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.
8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.
9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.
10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43
The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44
The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45
The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46
Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47
Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48
1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49
1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50
The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51
1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes. 3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52
1. Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:
(a) Signatures, ratifications and accessions under article 48;
(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53
1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

International Covenant on Economic, Social and Cultural Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966
Entry into force: 3 January 1976, in accordance with article 27

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, 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,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations

as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.
2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:
(a) Remuneration which provides all workers, as a minimum, with:
(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
(b) Safe and healthy working conditions;
(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:
(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:
1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed:
(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
(b) The improvement of all aspects of environmental and industrial hygiene;
(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education 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. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
(a) Primary education shall be compulsory

and available free to all;
(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14
Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15
1. The States Parties to the present Covenant recognize the right of everyone:
(a) To take part in cultural life;
(b) To enjoy the benefits of scientific progress and its applications;
(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields.

PART IV

Article 16
1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.
2.
(a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;
(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17
1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.
3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18
Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19
The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20
The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21
The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22
The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23
The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24
Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25
Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:
(a) Signatures, ratifications and accessions under article 26;
(b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

ILO Minimum Age Convention, 1973 (No.138)

Adopted by the General Conference of the International Labour Organization at its fifty-eighth session on 26 June 1973
Entry into force: 19 June 1976, in accordance with article 12

Preamble

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its fifty-eighth session on 6 June 1973, and

Having decided upon the adoption of certain proposals with regard to minimum age for admission to employment, which is the fourth item on the agenda of the session, and

Noting the terms of the Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, the Minimum Age (Trimmers and Stokers) Convention, 1921, the Minimum Age (Non-Industrial Employment) Convention, 1932, the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, and the Minimum Age (Underground Work) Convention, 1965, and

Considering that the time has come to establish a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labour, and

Having determined that these proposals shall take the form of an international Convention,

Adopts this twenty-sixth day of June of the year one thousand nine hundred and seventy-three the following Convention, which may be cited as the Minimum Age Convention, 1973:

Article 1

Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

Article 2

1. Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.

2. Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office, by further declarations, that it specifies a minimum age higher than that previously specified.

3. The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.

4. Notwithstanding the provisions of paragraph 3 of this Article, a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.

5. Each Member which has specified a minimum age of 14 years in pursuance of the provisions of the preceding paragraph shall include in its reports on the application of this Convention submitted under article 22 of the constitution of the International Labour Organization a statement:
(a) That its reason for doing so subsists; or
(b) That it renounces its right to avail itself of the provisions in question as from a stated date.

Article 3

1. The minimum age for admission to any type of employment or work – which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.

2. The types of employment or work to which paragraph 1 of this Article applies shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, where such exist.
3. Notwithstanding the provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organizations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

Article 4

1. In so far as necessary, the competent authority, after consultation with the organizations of employers and workers concerned, where such exist, may exclude from the application of this Convention limited categories of employment or work in respect of which special and substantial problems of application arise.
2. Each Member which ratifies this Convention shall list in its first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organization any categories which may have been excluded in pursuance of paragraph 1 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice in respect of the categories excluded and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.
3. Employment or work covered by Article 3 of this Convention shall not be excluded from the application of the Convention in pursuance of this Article.

Article 5

1. A Member whose economy and administrative facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, where such exist, initially limit the scope of application of this Convention.
2. Each Member which avails itself of the provisions of paragraph 1 of this Article shall specify, in a declaration appended to its ratification, the branches of economic activity or types of undertakings to which it will apply the provisions of the Convention.
3 The provisions of the Convention shall be applicable as a minimum to the following: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.
4. Any Member which has limited the scope of application of this Convention in pursuance of this Article:
(a) Shall indicate in its reports under article 22 of the Constitution of the International Labour Organization the general position as regards the employment or work of young persons and children in the branches of activity which are excluded from the scope of application of this Convention and any progress which may have been made towards wider application of the provisions of the Convention;
(b) May at any time formally extend the scope of application by a declaration addressed to the Director-General of the International Labour Office.

Article 6

This Convention does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organizations of employers and workers concerned, where such exist, and is an integral part of:
(a) A course of education or training for which a school or training institution is primarily responsible;
(b) A programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or
(c) A programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.

Article 7

1. National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is:
(a) Not likely to be harmful to their health or development; and
(b) Not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.
2. National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling on work which meets the requirements set forth in sub-paragraphs (a) and (b) of paragraph 1 of this Article.
3. The competent authority shall determine the activities in which employment or work may be permitted under paragraphs 1 and 2 of this Article and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.
4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a Member which has availed itself of the provisions of paragraph 4 of Article 2 may, for as long as it continues to do so, substitute the ages 12 and 14 for the ages 13 and 15 in paragraph 1 and the age 14 for the age 15 in paragraph 2 of this Article.

Article 8

1. After consultation with the organizations of employers and workers concerned, where such exist, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition of employment or work provided for in Article 2 of this Convention, for such purposes as participation in artistic performances.
2. Permits so granted shall limit the number of hours during which and prescribe the conditions in which employment or work is allowed.

Article 9

1. All necessary measures, including the provision of appropriate penalties, shall be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention.
2. National laws or regulations or the competent authority shall define the persons responsible for compliance with the provisions giving effect to the Convention.
3. National laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer; such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom he employs or who work for him and who are less than 18 years of age.

Article 10

1. This Convention revises, on the terms set forth in this Article, the Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, the Minimum Age (Trimmers and Stokers) Convention, 1921, the Minimum Age (Non-Industrial Employment) Convention, 1932, the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, and the Minimum Age (Underground Work) Convention, 1965.
2. The coming into force of this Convention shall not close the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, or the Minimum Age (Underground Work) Convention, 1965, to further ratification.
3. The Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, and the Minimum Age (Trimmers and Stokers) Convention, 1921, shall be closed to further ratification when all the parties thereto have consented to such closing by ratification of this Convention or by a declaration communicated to the Director-General of the International Labour Office.

4. When the obligations of this Convention are accepted:
(a) By a Member which is a party to the Minimum Age (Industry) Convention (Revised), 1937, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention, this shall ipso jure involve the immediate denunciation of that Convention,
(b) In respect of non-industrial employment as defined in the Minimum Age (Non-Industrial Employment) Convention, 1932, by a Member which is a party to that Convention, this shall ipso jure involve the immediate denunciation of that Convention,
(c) In respect of non-industrial employment as defined in the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, by a Member which is a party to that Convention, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention, this shall ipso jure involve the immediate denunciation of that Convention,
(d) In respect of maritime employment, by a Member which is a party to the Minimum Age (Sea) Convention (Revised), 1936, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention or the Member specifies that Article 3 of this Convention applies to maritime employment, this shall ipso jure involve the immediate denunciation of that Convention,
(e) In respect of employment in maritime fishing, by a Member which is a party to the Minimum Age (Fishermen) Convention, 1959, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention or the Member specifies that Article 3 of this Convention applies to employment in maritime fishing, this shall ipso jure involve the immediate denunciation of that Convention,
(f) By a Member which is a party to the Minimum Age (Underground Work) Convention, 1965, and a minimum age of not less than the age specified in pursuance of that Convention is specified in pursuance of Article 2 of this Convention or the Member specifies that such an age applies to employment underground in mines in virtue of Article 3 of this Convention, this shall ipso jure involve the immediate denunciation of that Convention,
if and when this Convention shall have come into force.

5. Acceptance of the obligations of this Convention:
(a) Shall involve the denunciation of the Minimum Age (Industry) Convention, 1919, in accordance with Article 12 thereof,
(b) In respect of agriculture shall involve the denunciation of the Minimum Age (Agriculture) Convention, 1921, in accordance with Article 9 thereof,
(c) In respect of maritime employment shall involve the denunciation of the Minimum Age (Sea) Convention, 1920, in accordance with Article 10 thereof, and of the Minimum Age (Trimmers and Stokers) Convention, 1921, in accordance with Article 12 thereof,
if and when this Convention shall have come into force.

Article 11
The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 12
1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 13
1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation should not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 14
1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations communicated to him by the Members of the Organization.
2. When notifying the Members of the Organization of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

Article 15
The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 16
At such times as may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 17
1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
(a) The ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 13 above, if and when the new revising Convention shall have come into force;
(b) As from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 18
The English and French versions of the text of this Convention are equally authoritative.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules")

Adopted by General Assembly resolution 40/33 of 29 November 1985

PART ONE

GENERAL PRINCIPLES

1. Fundamental perspectives

1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.

1.2 Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.

1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.

1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

1.5 These Rules shall be implemented in the context of economic, social and cultural conditions prevailing in each Member State.

1.6 Juvenile justice services shall be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

Commentary

These broad fundamental perspectives refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention. Such care measures for the young, before the onset of delinquency, are basic policy requisites designed to obviate the need for the application of the Rules.

Rules 1.1 to 1.3 point to the important role that a constructive social policy for juveniles will play, *inter alia*, in the prevention of juvenile crime and delinquency. Rule 1.4 defines juvenile justice as an integral part of social justice for juveniles, while rule 1.6 refers to the necessity of constantly improving juvenile justice, without falling behind the development of progressive social policy for juveniles in general and bearing in mind the need for consistent improvement of staff services.

Rule 1.5 seeks to take account of existing conditions in Member States which would cause the manner of implementation of particular rules necessarily to be different from the manner adopted in other States.

2. Scope of the Rules and definitions used

2.1 The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.

2.2 For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts:

(a) A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult;

(b) An offence is any behaviour (act or omission) that is punishable by law under the respective legal systems;

(c) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence.

2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

(a) To meet the varying needs of juvenile offencers, while protecting their basic rigths;

(b) To meet the need of society;

To implement the following rules thoroughly and fairly.

Commentary

The Standard Minimum Rules are deliberately formulated so as to be applicable within different legal systems and, at the same time, to set some minimum standards for the handling of juvenile offenders under any definition of a juvenile and under any system of dealing with juvenile offenders. The Rules are always to be applied impartially and without distinction of any kind.

Rule 2.1 therefore stresses the importance of the Rules always being applied impartially and without distinction of any kind. The rule follows the formulation of principle 2 of the Declaration of the Rights of the Child.

Rule 2.2 defines "juvenile" and "offence" as the components of the notion of the "juvenile offender", who is the main subject of these Standard Minimum Rules

(see, however, also rules 3 and 4). It should be noted that age limits will depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of "juvenile", ranging from 7 years to 18 years or above. Such a variety seems inevitable in view of the different national legal systems and does not diminish the impact of these Standard Minimum Rules.
Rule 2.3 is addressed to the necessity of specific national legislation for the optimal implementation of these Standard Minimum Rules, both legally and practically.

3. Extension of the Rules

3.1 The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.
3.2 Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.
3.3 Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.

Commentary

Rule 3 extends the protection afforded by the Standard Minimum Rules for the Administration of Juvenile Justice to cover:
(a) The so-called "status offences" prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for adults (for example, truancy, school and family disobedience, public drunkenness, etc.) (rule 3.1);
(b) Juvenile welfare and care proceedings (rule 3.2);
(c) Proceedings dealing with young adult offenders, depending of course on each given age limit (rule 3.3).
The extension of the Rules to cover these three areas seems to be justified. Rule 3.1 provides minimum guarantees in those fields, and rule 3.2 is considered a desirable step in the direction of more fair, equitable and humane justice for all juveniles in conflict with the law.

4. Age of criminal responsibility

4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

Commentary

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.).
Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.

5. Aims of juvenile justice

5.1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

Commentary

Rule 5 refers to two of the most important objectives of juvenile justice. The first objective is the promotion of the well-being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities, but the well-being of the juvenile should also be emphasized in legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions. (See also rule 14.)
The second objective is "the principle of proportionality". This principle is well-known as an instrument for curbing punitive sanctions, mostly expressed in terms of just deserts in relation to the gravity of the offence. The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reactions (for example by having regard to the offender's endeavour to indemnify the victim or to her or his willingness to turn to wholesome and useful life).
By the same token, reactions aiming to ensure the welfare of the young offender may go beyond necessity and therefore infringe upon the fundamental rights of the young individual, as has been observed in some juvenile justice systems. Here, too, the proportionality of the reaction to the circumstances of both the offender and the offence, including the victim, should be safeguarded.
In essence, rule 5 calls for no less and no more than a fair reaction in any given cases of juvenile delinquency and crime. The issues combined in the rule may help to stimulate development in both regards: new and innovative types of reactions are as desirable as precautions against any undue widening of the net of formal social control over juveniles.

6. Scope of discretion

6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.
6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion.
6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

Commentary

Rules 6.1, 6.2 and 6.3 combine several important features of effective, fair and humane juvenile justice administration: the need to permit the exercise of discretionary power at all significant levels of processing so that those who make determinations can take the actions deemed to be most appropriate in each individual case; and the need to provide checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender. Accountability and professionalism are instruments best apt to curb broad discretion. Thus, professional qualifications and expert training are emphasized here as a valuable means of ensuring the judicious exercise of discretion in matters of juvenile offenders. (See also rules 1.6 and 2.2.) The formulation of specific guidelines on the exercise of discretion and the provision of systems of review, appeal and the like in order to permit scrutiny of decisions and accountability are emphasized in this context. Such mechanisms are not specified here, as they do not easily lend themselves to incorporation into international standard minimum rules, which cannot possibly cover all differences in justice systems.

7. Rights of juveniles

7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

Commentary

Rule 7.1 emphasizes some important points that represent essential elements for a fair and just trial and that are internationally recognized in existing human rights instruments (See also rule 14.). The presumption of innocence, for instance, is also to be found in article 11 of the Universal Declaration of Human rights and in article 14, paragraph 2, of the International Covenant on Civil and Political Rights.
Rules 14 seq. of these Standard Minimum Rules specify issues that are important for proceedings in juvenile cases, in particular, while rule 7.1 affirms the most basic procedural safeguards in a general way.

8. Protection of privacy

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue

publicity or by the process of labelling.
8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

Commentary

Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as "delinquent" or "criminal".
Rule 8 stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle. (The general contents of rule 8 are further specified in rule 2 1.)

9. Saving clause

9.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations and other human rights instruments and standards recognized by the international community that relate to the care and protection of the young.

Commentary

Rule 9 is meant to avoid any misunderstanding in interpreting and implementing the present Rules in conformity with principles contained in relevant existing or emerging international human rights instruments and standards-such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and the Declaration of the Rights of the Child and the draft convention on the rights of the child. It should be understood that the application of the present Rules is without prejudice to any such international instruments which may contain provisions of wider application. (See also rule 27.)

PART TWO

INVESTIGATION AND PROSECUTION

10. Initial contact

10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.
10.2 A judge or other competent official or body shall, without delay, consider the issue of release.
10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or hi m, with due regard to the circumstances of the case.

Commentary

Rule 10.1 is in principle contained in rule 92 of the Standard Minimum Rules for the Treatment of Prisoners.
The question of release (rule 10.2) shall be considered without delay by a judge or other competent official. The latter refers to any person or institution in the broadest sense of the term, including community boards or police authorities having power to release an arrested person. (See also the International Covenant on Civil and Political Rights, article 9, paragraph 3.)
Rule 10.3 deals with some fundamental aspects of the procedures and behaviour on the part of the police and other law enforcement officials in cases of juvenile crime. To "avoid harm" admittedly is flexible wording and covers many features of possible interaction (for example the use of harsh language, physical violence or exposure to the environment). Involvement in juvenile justice processes in itself can be "harmful" to juveniles; the term "avoid harm" should be broadly interpreted, therefore, as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm. This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile's attitude towards the State and society. Moreover, the success of any further intervention is largely dependent on such initial contacts. Compassion and kind firmness are important in these situations.

11. Diversion

11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.
11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.
11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.
11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

Commentary

Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practised on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence). In many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.
As stated in rule 11.2, diversion may be used at any point of decision-making-by the police, the prosecution or other agencies such as the courts, tribunals, boards or councils. It may be exercised by one authority or several or all authorities, according to the rules and policies of the respective systems and in line with the present Rules. It need not necessarily be limited to petty cases, thus rendering diversion an important instrument.
Rule 11.3 stresses the important requirement of securing the consent of the young offender (or the parent or guardian) to the recommended diversionary measure(s). (Diversion to community service without such consent would contradict the Abolition of Forced Labour Convention.) However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not feel pressured (for example in order to avoid court appearance) or be pressured into consenting to diversion programmes. Thus, it is advocated that provision should be made for an objective appraisal of the appropriateness of dispositions involving young offenders by a "competent authority upon application". (The "competent authority," may be different from that referred to in rule 14.)
Rule 11.4 recommends the provision of viable alternatives to juvenile justice processing in the form of community-based diversion. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed (for example first offence, the act having been committed under peer pressure, etc.).

12. Specialization within the police

12.1 In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

Commentary

Rule 12 draws attention to the need for specialized training for all law enforcement officials who are involved in the administration of juvenile justice. As police are the first point of contact with the juvenile justice system, it is most important that they

act in an informed and appropriate manner. While the relationship between urbanization and crime is clearly complex, an increase in juvenile crime has been associated with the growth of large cities, particularly with rapid and unplanned growth. Specialized police units would therefore be indispensable, not only in the interest of implementing specific principles contained in the present instrument (such as rule 1.6) but more generally for improving the prevention and control of juvenile crime and the handling of juvenile offenders.

13. Detention pending trial

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.

Commentary

The danger to juveniles of "criminal contamination" while in detention pending trial must not be underestimated. It is therefore important to stress the need for alternative measures. By doing so, rule 13.1 encourages the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile.

Juveniles under detention pending trial are entitled to all the rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights, especially article 9 and article 10, paragraphs 2 (b) and 3.

Rule 13.4 does not prevent States from taking other measures against the negative influences of adult offenders which are at least as effective as the measures mentioned in the rule.

Different forms of assistance that may become necessary have been enumerated to draw attention to the broad range of particular needs of young detainees to be addressed (for example females or males, drug addicts, alcoholics, mentally ill juveniles, young persons suffering from the trauma, for example, of arrest, etc.).

Varying physical and psychological characteristics of young detainees may warrant classification measures by which some are kept separate while in detention pending trial, thus contributing to the avoidance of victimization and rendering more appropriate assistance.

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4 on juvenile justice standards, specified that the Rules, *inter alia*, should reflect the basic principle that pre-trial detention should be used only as a last resort, that no minors should be held in a facility where they are vulnerable to the negative influences of adult detainees and that account should always be taken of the needs particular to their stage of development.

PART THREE

ADJUDICATION AND DISPOSITION

14. Competent authority to adjudicate

14.1 Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial.

14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

Commentary

It is difficult to formulate a definition of the competent body or person that would universally describe an adjudicating authority. "Competent authority" is meant to include those who preside over courts or tribunals (composed of a single judge or of several members), including professional and lay magistrates as well as administrative boards (for example the Scottish and Scandinavian systems) or other more informal community and conflict resolution agencies of an adjudicatory nature.

The procedure for dealing with juvenile offenders shall in any case follow the minimum standards that are applied almost universally for any criminal defendant under the procedure known as "due process of law". In accordance with due process, a "fair and just trial" includes such basic safeguards as the presumption of innocence, the presentation and examination of witnesses, the common legal defences, the right to remain silent, the right to have the last word in a hearing, the right to appeal, etc. (See also rule 7.1.)

15. Legal counsel, parents and guardians

15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

Commentary

Rule 15.1 uses terminology similar to that found in rule 93 of the Standard Minimum Rules for the Treatment of Prisoners. Whereas legal counsel and free legal aid are needed to assure the juvenile legal assistance, the right of the parents or guardian to participate as stated in rule 15.2 should be viewed as general psychological and emotional assistance to the juvenile-a function extending throughout the procedure.

The competent authority's search for an adequate disposition of the case may profit, in particular, from the cooperation of the legal representatives of the juvenile (or, for that matter, some other personal assistant who the juvenile can and does really trust). Such concern can be thwarted if the presence of parents or guardians at the hearings plays a negative role, for instance, if they display a hostile attitude towards the juvenile, hence, the possibility of their exclusion must be provided for.

16. Social inquiry reports

16.1 In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

Commentary

Social inquiry reports (social reports or presentence reports) are an indispensable aid in most legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences, etc. For this purpose, some jurisdictions use special social services or personnel attached to the court or board. Other personnel, including probation officers, may serve the same function. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature.

17. Guiding principles in adjudication and disposition

17.1 The disposition of the competent authority shall be guided by the following principles:

(a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;

(b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;

(c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;

(d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

17.2 Capital punishment shall not be imposed for any crime committed by juveniles.
17.3 Juveniles shall not be subject to corporal punishment.
17.4 The competent authority shall have the power to discontinue the proceedings at any time.

Commentary

The main difficulty in formulating guidelines for the adjudication of young persons stems from the fact that there are unresolved conflicts of a philosophical nature, such as the following:
(a) Rehabilitation versus just desert;
(b) Assistance versus repression and punishment;
(c) Reaction according to the singular merits of an individual case versus reaction according to the protection of society in general;
(d) General deterrence versus individual incapacitation.
The conflict between these approaches is more pronounced in juvenile cases than in adult cases. With the variety of causes and reactions characterizing juvenile cases, these alternatives become intricately interwoven.
It is not the function of the Standard Minimum Rules for the Administration of Juvenile Justice to prescribe which approach is to be followed but rather to identify one that is most closely in consonance with internationally accepted principles. Therefore the essential elements as laid down in rule 17.1, in particular in subparagraphs (a) and (c), are mainly to be understood as practical guidelines that should ensure a common starting point; if heeded by the concerned authorities (see also rule 5), they could contribute considerably to ensuring that the fundamental rights of juvenile offenders are protected, especially the fundamental rights of personal development and education.
Rule 17.1 (b) implies that strictly punitive approaches are not appropriate. Whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person.
In line with resolution 8 of the Sixth United Nations Congress, rule 17.1 (b) encourages the use of alternatives to institutionalization to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed, bearing the public safety in mind. Probation should be granted to the greatest possible extent via suspended sentences, conditional sentences, board orders and other dispositions.
Rule 17.1 (c) corresponds to one of the guiding principles in resolution 4 of the Sixth Congress which aims at avoiding incarceration in the case of juveniles unless there is no other appropriate response that will protect the public safety.
The provision prohibiting capital punishment in rule 17.2 is in accordance with article 6, paragraph 5, of the International Covenant on Civil and Political Rights.
The provision against corporal punishment is in line with article 7 of the International Covenant on Civil and Political Rights and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the draft convention on the rights of the child.
The power to discontinue the proceedings at any time (rule 17.4) is a characteristic inherent in the handling of juvenile offenders as opposed to adults. At any time, circumstances may become known to the competent authority which would make a complete cessation of the intervention appear to be the best disposition of the case.

18. Various disposition measures

18.1 A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:
(a) Care, guidance and supervision orders;
(b) Probation;
(c) Community service orders;
(d) Financial penalties, compensation and restitution;
(e) Intermediate treatment and other treatment orders;
(f) Orders to participate in group counselling and similar activities;
(g) Orders concerning foster care, living communities or other educational settings;
(h) Other relevant orders.
18.2 No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

Commentary

Rule 18.1 attempts to enumerate some of the important reactions and sanctions that have been practised and proved successful thus far, in different legal systems. On the whole they represent promising opinions that deserve replication and further development. The rule does not enumerate staffing requirements because of possible shortages of adequate staff in some regions; in those regions measures requiring less staff may be tried or developed.
The examples given in rule 18.1 have in common, above all, a reliance on and an appeal to the community for the effective implementation of alternative dispositions. Community-based correction is a traditional measure that has taken on many aspects. On that basis, relevant authorities should be encouraged to offer community-based services.
Rule 18.2 points to the importance of the family which, according to article 10, paragraph l, of the International Covenant on Economic, Social and Cultural Rights, is "the natural and fundamental group unit of society". Within the family, the parents have not only the right but also the responsibility to care for and supervise their children. Rule 18.2, therefore, requires that the separation of children from their parents is a measure of last resort. It may be resorted to only when the facts of the case clearly warrant this grave step (for example child abuse).

19. Least possible use of institutionalization

19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

Commentary

Progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.
Rule 19 aims at restricting institutionalization in two regards: in quantity ("last resort") and in time ("minimum necessary period"). Rule 19 reflects one of the basic guiding principles of resolution 4 of the Sixth United Nations Congress: a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to "open" over "closed" institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

20. Avoidance of unnecessary delay

20.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.
Commentary
The speedy conduct of formal procedures in juvenile cases is a paramount concern. Otherwise whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically.

21. Records

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall

be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.
21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

Commentary

The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the interests of the juvenile offender. (See also rule 8.) "Other duly authorized persons" would generally include, among others, researchers.

22. Need for professionalism and training

22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.
22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

Commentary

The authorities competent for disposition may be persons with very different backgrounds (magistrates in the United Kingdom of Great Britain and Northern Ireland and in regions influenced by the common law system; legally trained judges in countries using Roman law and in regions influenced by them; and elsewhere elected or appointed laymen or jurists, members of community-based boards, etc.). For all these authorities, a minimum training in law, sociology, psychology, criminology and behavioural sciences would be required. This is considered as important as the organizational specialization and independence of the competent authority.
For social workers and probation officers, it might not be feasible to require professional specialization as a prerequisite for taking over any function dealing with juvenile offenders. Thus, professional on-the job instruction would be minimum qualifications.
Professional qualifications are an essential element in ensuring the impartial and effective administration of juvenile justice. Accordingly, it is necessary to improve the recruitment, advancement and professional training of personnel and to provide them with the necessary means to enable them to properly fulfil their functions.
All political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided in order to achieve impartiality in the administration of juvenile justice. This was recommended by the Sixth Congress. Furthermore, the Sixth Congress called on Member States to ensure the fair and equal treatment of women as criminal justice personnel and recommended that special measures should be taken to recruit, train and facilitate the advancement of female personnel in juvenile justice administration.

PART FOUR

NON-INSTITUTIONAL TREATMENT

23. Effective implementation of disposition

23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require.
23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules.

Commentary

Disposition in juvenile cases, more so than in adult cases, tends to influence the offender's life for a long period of time. Thus, it is important that the competent authority or an independent body (parole board, probation office, youth welfare institutions or others) with qualifications equal to those of the competent authority that originally disposed of the case should monitor the implementation of the disposition. In some countries, a juge de l'exécution des peines has been installed for this purpose.
The composition, powers and functions of the authority must be flexible; they are described in general terms in rule 23 in order to ensure wide acceptability.

24. Provision of needed assistance

24.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

Commentary

The promotion of the well-being of the juvenile is of paramount consideration. Thus, rule 24 emphasizes the importance of providing requisite facilities, services and other necessary assistance as may further the best interests of the juvenile throughout the rehabilitative process.

25. Mobilization of volunteers and other community services

25.1 Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

Commentary

This rule reflects the need for a rehabilitative orientation of all work with juvenile offenders. Cooperation with the community is indispensable if the directives of the competent authority are to be carried out effectively. Volunteers and voluntary services, in particular, have proved to be valuable resources but are at present underutilized. In some instances, the cooperation of ex-offenders (including ex-addicts) can be of considerable assistance.
Rule 25 emanates from the principles laid down in rules 1.1 to 1.6 and follows the relevant provisions of the International Covenant on Civil and Political Rights.

PART FIVE

INSTITUTIONAL TREATMENT

26. Objectives of institutional treatment

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.
26.2 Juveniles in institutions shall receive care, protection and all necessary assistance-social, educational, vocational, psychological, medical and physical-that they may require because of their age, sex, and personality and in the interest of their wholesome development .
26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.
26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.
26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.
26.6 Inter-ministerial and inter-departmental cooperation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do no leave the institution at an educational disadvantage.

Commentary

The objectives of institutional treatment as stipulated in rules 26.1 and 26.2 would be acceptable to any system and culture. However, they have not yet been attained everywhere, and much more has to be done in this respect.
Medical and psychological assistance, in particular, are extremely important for institutionalized drug addicts, violent and mentally ill young persons.
The avoidance of negative influences through adult offenders and the safeguarding of the well-being of juveniles in an institutional setting, as stipulated in rule 26.3, are in line with one of the basic guiding principles of the Rules, as set out by the Sixth Congress in its resolution 4. The rule does not prevent States from taking other measures against the negative influences of adult offenders, which are at least as effective as the measures mentioned in the rule. (See also rule 13.4.)
Rule 26.4 addresses the fact that female offenders normally receive less attention

than their male counterparts. as pointed out by the Sixth Congress. In particular, resolution 9 of the Sixth Congress calls for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody. Moreover, this rule should also be considered in the light of the Caracas Declaration of the Sixth Congress, which, *inter alia*, calls for equal treatment in criminal justice administration, and against the background of the Declaration on the Elimination of Discrimination against Women and the Convention on the Elimination of All Forms of Discrimination against Women.

The right of access (rule 26.5) follows from the provisions of rules 7.1, 10.1, 15.2 and 18.2. Inter-ministerial and inter-departmental cooperation (rule 26.6) are of particular importance in the interest of generally enhancing the quality of institutional treatment and training.

27. Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations

27.1 The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

Commentary

The Standard Minimum Rules for the Treatment of Prisoners were among the first instruments of this kind to be promulgated by the United Nations. It is generally agreed that they have had a world-wide impact. Although there are still countries where implementation is more an aspiration than a fact, those Standard Minimum Rules continue to be an important influence in the humane and equitable administration of correctional institutions.

Some essential protections covering juvenile offenders in institutions are contained in the Standard Minimum Rules for the Treatment of Prisoners (accommodation, architecture, bedding, clothing, complaints and requests, contact with the outside world, food, medical care, religious service, separation of ages, staffing, work, etc.) as are provisions concerning punishment and discipline, and restraint for dangerous offenders. It would not be appropriate to modify those Standard Minimum Rules according to the particular characteristics of institutions for juvenile offenders within the scope of the Standard Minimum Rules for the Administration of Juvenile Justice.

Rule 27 focuses on the necessary requirements for juveniles in institutions (rule 27.1) as well as on the varying needs specific to their age, sex and personality (rule 27.2). Thus, the objectives and content of the rule interrelate to the relevant provisions of the Standard Minimum Rules for the Treatment of Prisoners.

28. Frequent and early recourse to conditional release

28.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.

28.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

Commentary

The power to order conditional release may rest with the competent authority, as mentioned in rule 14.1, or with some other authority. In view of this, it is adequate to refer here to the "appropriate" rather than to the "competent" authority.

Circumstances permitting, conditional release shall be preferred to serving a full sentence. Upon evidence of satisfactory progress towards rehabilitation, even offenders who had been deemed dangerous at the time of their institutionalization can be conditionally released whenever feasible. Like probation, such release may be conditional on the satisfactory fulfilment of the requirements specified by the relevant authorities for a period of time established in the decision, for example relating to "good behaviour" of the offender, attendance in community programmes, residence in half-way houses, etc.

In the case of offenders conditionally released from an institution, assistance and supervision by a probation or other officer (particularly where probation has not yet been adopted) should be provided and community support should be encouraged.

29. Semi-institutional arrangements

29.1 Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

Commentary

The importance of care following a period of institutionalization should not be underestimated. This rule emphasizes the necessity of forming a net of semi-institutional arrangements.

This rule also emphasizes the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide guidance and structural support as an important step towards successful reintegration into society.

PART SIX

RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION

30. Research as a basis for planning, policy formulation and evaluation

30.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.

30.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.

30.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.

30.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.

Commentary

The utilization of research as a basis for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. The mutual feedback between research and policy is especially important in juvenile justice. With rapid and often drastic changes in the life-styles of the young and in the forms and dimensions of juvenile crime, the societal and justice responses to juvenile crime and delinquency quickly become outmoded and inadequate.

Rule 30 thus establishes standards for integrating research into the process of policy formulation and application in juvenile justice administration. The rule draws particular attention to the need for regular review and evaluation of existing programmes and measures and for planning within the broader context of overall development objectives.

A constant appraisal of the needs of juveniles, as well as the trends and problems of delinquency, is a prerequisite for improving the methods of formulating appropriate policies and establishing adequate interventions, at both formal and informal levels. In this context, research by independent persons and bodies should be facilitated by responsible agencies, and it may be valuable to obtain and to take into account the views of juveniles themselves, not only those who come into contact with the system.

The process of planning must particularly emphasize a more effective and equitable system for the delivery of necessary services. Towards that end, there should be a comprehensive and regular assessment of the wide-ranging, particular needs and problems of juveniles and an identification of clear-cut priorities. In that connection, there should also be a coordination in the use of existing resources, including alternatives and community support that would be suitable in setting up specific procedures designed to implement and monitor established programmes.

United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)

Adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990

I. FUNDAMENTAL PRINCIPLES

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.

2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.

3. For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control.

4. In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme.

5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:

(a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;

(b) Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;

(c) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;

(d) Safeguarding the well-being, development, rights and interests of all young persons;

(e) Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood;

(f) Awareness that, in the predominant opinion of experts, labelling a young person as "deviant"', "delinquent" or "pre-delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons.

6. Community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort.

II. SCOPE OF THE GUIDELINES

7. The present Guidelines should be interpreted and implemented within the broad framework of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Declaration of the Rights of the Child and the Convention on the Rights of the Child, and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), as well as other instruments and norms relating to the rights, interests and well-being of all children and young persons.

8. The present Guidelines should also be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. General prevention

9. Comprehensive prevention plans should be instituted at every level of Government and include the following:

(a) In-depth analyses of the problem and inventories of programmes, services, facilities and resources available;

(b) Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts;

(c) Mechanisms for the appropriate coordination of prevention efforts between governmental and non-governmental agencies;

(d) Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated in the course of implementation;

(e) Methods for effectively reducing the opportunity to commit delinquent acts;

(f) Community involvement through a wide range of services and programmes;

(g) Close interdisciplinary cooperation between national, State, provincial and local governments, with the involvement of the private sector, representative citizens of the community to be served, and labour, child-care, health education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime;

(h) Youth participation in delinquency prevention policies and processes, including recourse to community resources, youth self-help, and victim compensation and assistance programmes;

(i) Specialized personnel at all levels.

IV. SOCIALIZATION PROCESSES

10. Emphasis should be placed on preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialization and integration processes.

A. Family

11. Every society should place a high priority on the needs and well-being of the family and of all its members.

12. Since the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family, including the extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children. Adequate arrangements including day-care should be provided.

13. Governments should establish policies that are conducive to the bringing up of children in stable and settled family environments. Families in need of assistance in the resolution of conditions of instability or conflict should be provided with requisite services.

14. Where a stable and settled family environment is lacking and when community efforts to assist parents in this regard have failed and the extended family cannot fulfil this role, alternative placements, including foster care and adoption, should be considered. Such placements should replicate, to the extent possible, a stable and settled family environment, while, at the same time, establishing a sense of permanency for children, thus avoiding problems associated with "foster drift".

15. Special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigenous, migrant and refugee families. As such changes may disrupt the social capacity of the family to secure the traditional rearing and nurturing of children, often as a result of role and culture conflict, innovative and socially constructive modalities for the socialization of children have to be designed.

16. Measures should be taken and programmes developed to provide families with the opportunity to learn about parental roles and obligations as regards child development and child care, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community-based activities.

17. Governments should take measures to promote family cohesion and harmony and to discourage the separation of children from their parents, unless circumstances affecting the welfare and future of the child leave no viable alternative.

18. It is important to emphasize the socialization function of the family and extended family; it is also equally important to recognize the future role, responsibilities, participation and partnership of young persons in society.

19. In ensuring the right of the child to proper socialization, Governments and other agencies should rely on existing social and legal agencies, but, whenever traditional institutions and customs are no longer effective, they should also provide and allow for innovative measures.

B. Education

20. Governments are under an obligation to make public education accessible to all young persons.

21. Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:

(a) Teaching of basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child is living, for civilizations different from the child's own and for human rights and fundamental freedoms;

(b) Promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential;

(c) Involvement of young persons as active and effective participants in, rather than mere objects of, the educational process;

(d) Undertaking activities that foster a sense of identity with and of belonging to the school and the community;

(e) Encouragement of young persons to understand and respect diverse views and opinions, as well as cultural and other differences;

(f) Provision of information and guidance regarding vocational training, employment opportunities and career development;

(g) Provision of positive emotional support to young persons and the avoidance of psychological maltreatment;

(h) Avoidance of harsh disciplinary measures, particularly corporal punishment.

22. Educational systems should seek to work together with parents, community organizations and agencies concerned with the activities of young persons.

23. Young persons and their families should be informed about the law and their rights and responsibilities under the law, as well as the universal value system, including United Nations instruments.

24. Educational systems should extend particular care and attention to young persons who are at social risk. Specialized prevention programmes and educational materials, curricula, approaches and tools should be developed and fully utilized.

25. Special attention should be given to comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons. Teachers and other professionals should be equipped and trained to prevent and deal with these problems. Information on the use and abuse of drugs, including alcohol, should be made available to the student body.

26. Schools should serve as resource and referral centres for the provision of medical, counselling and other services to young persons, particularly those with special needs and suffering from abuse, neglect, victimization and exploitation.

27. Through a variety of educational programmes, teachers and other adults and the student body should be sensitized to the problems, needs and perceptions of young persons, particularly those belonging to underprivileged, disadvantaged, ethnic or other minority and low-income groups.

28. School systems should attempt to meet and promote the highest professional and educational standards with respect to curricula, teaching and learning methods and approaches, and the recruitment and training of qualified teachers. Regular monitoring and assessment of performance by the appropriate professional organizations and authorities should be ensured.

29. School systems should plan, develop and implement extracurricular activities of interest to young persons, in cooperation with community groups.

30. Special assistance should be given to children and young persons who find it difficult to comply with attendance codes, and to "drop-outs".

31. Schools should promote policies and rules that are fair and just; students should be represented in bodies formulating school policy, including policy on discipline, and decision-making.

C. Community

32. Community-based services and programmes which respond to the special needs, problems, interests and concerns of young persons and which offer appropriate counselling and guidance to young persons and their families should be developed, or strengthened where they exist.

33. Communities should provide, or strengthen where they exist, a wide range of community-based support measures for young persons, including community development centres, recreational facilities and services to respond to the special problems of children who are at social risk. In providing these helping measures, respect for individual rights should be ensured.

34. Special facilities should be set up to provide adequate shelter for young persons who are no longer able to live at home or who do not have homes to live in.

35. A range of services and helping measures should be provided to deal with the difficulties experienced by young persons in the transition to adulthood. Such services should include special programmes for young drug abusers which emphasize care, counselling, assistance and therapy-oriented interventions.

36. Voluntary organizations providing services for young persons should be given financial and other support by Governments and other institutions.

37. Youth organizations should be created or strengthened at the local level and given full participatory status in the management of community affairs. These organizations should encourage youth to organize

collective and voluntary projects, particularly projects aimed at helping young persons in need of assistance.
38. Government agencies should take special responsibility and provide necessary services for homeless or street children; information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons.
39. A wide range of recreational facilities and services of particular interest to young persons should be established and made easily accessible to them.

D. Mass media

40. The mass media should be encouraged to ensure that young persons have access to information and material from a diversity of national and international sources.
41. The mass media should be encouraged to portray the positive contribution of young persons to society.
42. The mass media should be encouraged to disseminate information on the existence of services, facilities and opportunities for young persons in society.
43. The mass media generally, and the television and film media in particular, should be encouraged to minimize the level of pornography, drugs and violence portrayed and to display violence and exploitation disfavourably, as well as to avoid demeaning and degrading presentations, especially of children, women and interpersonal relations, and to promote egalitarian principles and roles.
44. The mass media should be aware of its extensive social role and responsibility, as well as its influence, in communications relating to youthful drug and alcohol abuse. It should use its power for drug abuse prevention by relaying consistent messages through a balanced approach. Effective drug awareness campaigns at all levels should be promoted.

V. SOCIAL POLICY

45. Government agencies should give high priority to plans and programmes for young persons and should provide sufficient funds and other resources for the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing and other relevant services, including drug and alcohol abuse prevention and treatment, ensuring that such resources reach and actually benefit young persons.
46. The institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance. Criteria authorizing formal intervention of this type should be strictly defined and limited to the following situations: (a) where the child or young person has suffered harm that has been inflicted by the parents or guardians; (b) where the child or young person has been sexually, physically or emotionally abused by the parents or guardians; (c) where the child or young person has been neglected, abandoned or exploited by the parents or guardians; (d) where the child or young person is threatened by physical or moral danger due to the behaviour of the parents or guardians; and (e) where a serious physical or psychological danger to the child or young person has manifested itself in his or her own behaviour and neither the parents, the guardians, the juvenile himself or herself nor non-residential community services can meet the danger by means other than institutionalization.
47. Government agencies should provide young persons with the opportunity of continuing in full-time education, funded by the State where parents or guardians are unable to support the young persons, and of receiving work experience.
48. Programmes to prevent delinquency should be planned and developed on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly.
49. Scientific information should be disseminated to the professional community and to the public at large about the sort of behaviour or situation which indicates or may result in physical and psychological victimization, harm and abuse, as well as exploitation, of young persons.
50. Generally, participation in plans and programmes should be voluntary. Young persons themselves should be involved in their formulation, development and implementation.
51. Government should begin or continue to explore, develop and implement policies, measures and strategies within and outside the criminal justice system to prevent domestic violence against and affecting young persons and to ensure fair treatment to these victims of domestic violence.

VI. LEGISLATION AND JUVENILE JUSTICE ADMINISTRATION

52. Governments should enact and enforce specific laws and procedures to promote and protect the rights and well-being of all young persons.
53. Legislation preventing the victimization, abuse, exploitation and the use for criminal activities of children and young persons should be enacted and enforced.
54. No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.
55. Legislation and enforcement aimed at restricting and controlling accessibility of weapons of any sort to children and young persons should be pursued.
56. In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.
57. Consideration should be given to the establishment of an office of ombudsman or similar independent organ, which would ensure that the status, rights and interests of young persons are upheld and that proper referral to available services is made. The ombudsman or other organ designated would also supervise the implementation of the Riyadh Guidelines, the Beijing Rules and the Rules for the Protection of Juveniles Deprived of their Liberty. The ombudsman or other organ would, at regular intervals, publish a report on the progress made and on the difficulties encountered in the implementation of the instrument. Child advocacy services should also be established.
58. Law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system.
59. Legislation should be enacted and strictly enforced to protect children and young persons from drug abuse and drug traffickers.

VII. Research, policy development and coordination

60. Efforts should be made and appropriate mechanisms established to promote, on both a multidisciplinary and an intradisciplinary basis, interaction and coordination between economic, social, education and health agencies and services, the justice system, youth, community and development agencies and other relevant institutions.
61. The exchange of information, experience and expertise gained through projects, programmes, practices and initiatives relating to youth crime, delinquency prevention and juvenile justice should be intensified at the national, regional and international levels.
62. Regional and international cooperation on matters of youth crime, delinquency prevention and juvenile justice involving practitioners, experts and decision makers should be further developed and strengthened.
63. Technical and scientific cooperation on practical and policy-related matters, particularly in training, pilot and demonstration projects, and on specific issues concerning the prevention of youth crime and juvenile delinquency should be strongly supported by all Governments, the United Nations system and other concerned organizations.
64. Collaboration should be encouraged in undertaking scientific research with respect to effective modalities for youth crime and juvenile delinquency prevention and the findings of such research should be widely disseminated and evaluated.
65. Appropriate United Nations bodies, institutes, agencies and offices should pursue close collaboration and coordination on various questions related to children juvenile justice and youth crime and juvenile delinquency prevention.
66. On the basis of the present Guidelines, the United Nations Secretariat, in cooperation with interested institutions, should play an active role in the conduct of research, scientific collaboration, the formulation of policy options and the review and monitoring of their implementation, and should serve as a source of reliable information on effective modalities for delinquency prevention.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty

Adopted by General Assembly resolution 45/113 of 14 December 1990

I. FUNDAMENTAL PERSPECTIVES

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.

2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.

3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.

4. The Rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.

5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.

6. The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.

7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.

8. The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.

9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community, that are more conducive to ensuring the rights, care and protection of juveniles, children and all young persons.

10. In the event that the practical application of particular Rules contained in sections II to V, inclusive, presents any conflict with the Rules contained in the present section, compliance with the latter shall be regarded as the predominant requirement.

II. SCOPE AND APPLICATION OF THE RULES

11. For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

13. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

14. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority, while the objectives of social integration should be secured by regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

15. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section

III applies specifically to juveniles under arrest or awaiting trial.

16. The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. JUVENILES UNDER ARREST OR AWAITING TRIAL

17. Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

(a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;

(b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;

(c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

IV. THE MANAGEMENT OF JUVENILE FACILITIES

A. Records

19. All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.

20. No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.

B. Admission, registration, movement and transfer

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

(a) Information on the identity of the juvenile;

(b) The fact of and reasons for commitment and the authority therefor;

(c) The day and hour of admission, transfer and release;

(d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;

(e) Details of known physical and mental health problems, including drug and alcohol abuse.

22. The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.

24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

25. All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.

26. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.

C. Classification and placement

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

29. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.

30. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

D. Physical environment and accommodation

31. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled

procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.

33. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, while bearing in mind local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

35. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition. All such articles and money should be returned to the juvenile on release, except in so far as he or she has been authorized to spend money or send such property out of the facility. If a juvenile receives or is found in possession of any medicine, the medical officer should decide what use should be made of it.

36. To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.

37. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

E. Education, vocational training and work

38. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

39. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

40. Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.

41. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.

42. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

44. All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty.

45. Wherever possible, juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

46. Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to indemnify the victim injured by his or her offence or to send it to his or her family or other persons outside the detention facility.

F. Recreation

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

G. Religion

48. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.

H. Medical care

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

50. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.

52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.
53. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.
54. Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.
55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testees in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

I. Notification of illness, injury and death

56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a foreign juvenile is a citizen.
57. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.
58. A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family member and should be provided with the opportunity to attend the funeral of the deceased or go to the bedside of a critically ill relative.

J. Contacts with the wider community

59. Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.
60. Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel.
61. Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.
62. Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juvenile is interested.

K. Limitations of physical restraint and the use of force

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.
64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.
65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

L. Disciplinary procedures

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.
67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.
68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:
(a) Conduct constituting a disciplinary offence;
(b) Type and duration of disciplinary sanctions that may be inflicted;
(c) The authority competent to impose such sanctions;
(d) The authority competent to consider appeals.
69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.
70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.
71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

M. Inspection and complaints

72. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access

to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.

73. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.

74. After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them. Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution.

75. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.

76. Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

77. Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

78. Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.

N. Return to the community

79. All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.

80. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community.

V. Personnel

81. Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis. This should not preclude part-time or volunteer workers when the level of support and training they can provide is appropriate and beneficial. Detention facilities should make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles.

82. The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.

83. To secure the foregoing ends, personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men. The personnel of juvenile detention facilities should be continually encouraged to fulfil their duties and obligations in a humane, committed, professional, fair and efficient manner, to conduct themselves at all times in such a way as to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective.

84. The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance cooperation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favourable to the efficient fulfilment of their duties.

85. The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.

86. The director of a facility should be adequately qualified for his or her task, with administrative ability and suitable training and experience, and should carry out his or her duties on a full-time basis.

87. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:

(a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;

(b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;

(c) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;

(d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;

(e) All personnel should respect the right of the juvenile to privacy, and, in particular, should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;

(f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.

Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption

Hague Conference on Private International Law, The Hague, 29 May 1993
Entered into force: 1 May 1995

The States signatory to the present Convention,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the United Nations Convention on the Rights of the Child, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions:

CHAPTER I

Scope of the Convention

Article 1

The objects of the present Convention are –
a) to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;
b) to establish a system of cooperation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

Article 2

(1) The Convention shall apply where a child habitually resident in one Contracting State ("the State of origin") has been, is being, or is to be moved to another Contracting State ("the receiving State") either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.
(2) The Convention covers only adoptions which create a permanent parent-child relationship.

Article 3

The Convention ceases to apply if the agreements mentioned in Article 17, sub-paragraph c, have not been given before the child attains the age of eighteen years.

CHAPTER II

Requirements for Intercountry Adoptions

Article 4

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin –
a) have established that the child is adoptable;
b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;
c) have ensured that
(1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,
(2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
(3) the consents have not been induced by payment or compensation of any kind and

have not been withdrawn, and
(4) the consent of the mother, where required, has been given only after the birth of the child; and
d) have ensured, having regard to the age and degree of maturity of the child, that
(1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
(2) consideration has been given to the child's wishes and opinions,
(3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
(4) such consent has not been induced by payment or compensation of any kind.

Article 5
An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State –
a) have determined that the prospective adoptive parents are eligible and suited to adopt;
b) have ensured that the prospective adoptive parents have been counselled as may be necessary; and
c) have determined that the child is or will be authorized to enter and reside permanently in that State.

Chapter III
Central Authorities and Accredited Bodies

Article 6
(1) A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.
(2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 7
(1) Central Authorities shall cooperate with each other and promote cooperation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.
(2) They shall take directly all appropriate measures to –
a) provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;
b) keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

Article 8
Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

Article 9
Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to –
a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;
b) facilitate, follow and expedite proceedings with a view to obtaining the adoption;
c) promote the development of adoption counselling and post-adoption services in their States;
d) provide each other with general evaluation reports about experience with intercountry adoption;
e) reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

Article 10
Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

Article 11
An accredited body shall –
a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;
b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and
c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

Article 12
A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorized it to do so.

Article 13
The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

Chapter IV
Procedural Requirements in Intercountry Adoption

Article 14
Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

Article 15
(1) If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.
(2) It shall transmit the report to the Central Authority of the State of origin.

Article 16
(1) If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall –
a) prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;
b) give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;
c) ensure that consents have been obtained in accordance with Article 4; and
d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.
(2) It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

Article 17
Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if –
a) the Central Authority of that State has ensured that the prospective adoptive parents agree;
b) the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;
c) the Central Authorities of both States have agreed that the adoption may proceed; and
d) it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorized to enter and reside permanently in the receiving State.

Article 18
The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

Article 19
(1) The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.
(2) The Central Authorities of both States shall ensure that this transfer takes place in

secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.
(3) If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

Article 20
The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

Article 21
(1) Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular –
a) to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;
b) in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;
c) as a last resort, to arrange the return of the child, if his or her interests so require.
(2) Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

Article 22
(1) The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.
(2) Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who –
a) meet the requirements of integrity, professional competence, experience and accountability of that State; and
b) are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.
(3) A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.
(4) Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.
(5) Notwithstanding any declaration made under paragraph 2, the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

Chapter V
Recognition and Effects of the Adoption

Article 23
(1) An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph c), were given.
(2) Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

Article 24
The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

Article 25
Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognize adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

Article 26
(1) The recognition of an adoption includes recognition of
a) the legal parent-child relationship between the child and his or her adoptive parents;
b) parental responsibility of the adoptive parents for the child;
c) the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.
(2) In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognized, rights equivalent to those resulting from adoptions having this effect in each such State.
(3) The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognizes the adoption.

Article 27
(1) Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognizes the adoption under the Convention, be converted into an adoption having such an effect –
a) if the law of the receiving State so permits; and
b) if the consents referred to in Article 4, sub-paragraphs c and d, have been or are given for the purpose of such an adoption.
(2) Article 23 applies to the decision converting the adoption.

CHAPTER VI
General Provisions

Article 28
The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

Article 29
There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs a) to c), and Article 5, sub-paragraph a), have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

Article 30
(1) The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.
(2) They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

Article 31
Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

Article 32
(1) No one shall derive improper financial or other gain from an activity related to an intercountry adoption.
(2) Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.
(3) The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

Article 33
A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

Article 34
If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

Article 35
The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

Article 36
In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units –
a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
b) any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;
c) any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorized to act in the relevant territorial unit;
d) any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

Article 37
In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 38
A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

Article 39
(1) The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.
(2) Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

Article 40
No reservation to the Convention shall be permitted.

Article 41
The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

Article 42
The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII
Final Clauses

Article 43
(1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.
(2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 44
(1) Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph 1.
(2) The instrument of accession shall be deposited with the depositary.
(3) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph b) of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 45
(1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
(2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.
(3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 46
(1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.
(2) Thereafter the Convention shall enter into force –
a) for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;
b) for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 47
(1) A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.
(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

Article 48
The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following –
a) the signatures, ratifications, acceptances and approvals referred to in Article 43;
b) the accessions and objections raised to accessions referred to in Article 44;
c) the date on which the Convention enters into force in accordance with Article 46;
d) the declarations and designations referred to in Articles 22, 23, 25 and 45;
e) the agreements referred to in Article 39;
f) the denunciations referred to in Article 47.
In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.
Done at The Hague, on the 29th day of May 1993, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.

Standard Rules on the Equalization of Opportunities for Persons with Disabilities

Adopted by General Assembly resolution 48/96 of 20 December 1993

INTRODUCTION

Background and current needs

1. There are persons with disabilities in all parts of the world and at all levels in every society. The number of persons with disabilities in the world is large and is growing.

2. Both the causes and the consequences of disability vary throughout the world. Those variations are the result of different socio-economic circumstances and of the different provisions that States make for the well-being of their citizens.

3. Present disability policy is the result of developments over the past 200 years. In many ways it reflects the general living conditions and social and economic policies of different times. In the disability field, however, there are also many specific circumstances that have influenced the living conditions of persons with disabilities. Ignorance, neglect, superstition and fear are social factors that throughout the history of disability have isolated persons with disabilities and delayed their development.

4. Over the years disability policy developed from elementary care at institutions to education for children with disabilities and rehabilitation for persons who became disabled during adult life. Through education and rehabilitation, persons with disabilities became more active and a driving force in the further development of disability policy. Organizations of persons with disabilities, their families and advocates were formed, which advocated better conditions for persons with disabilities. After the Second World War the concepts of integration and normalization were introduced, which reflected a growing awareness of the capabilities of persons with disabilities.

5. Towards the end of the 1960s organizations of persons with disabilities in some countries started to formulate a new concept of disability. That new concept indicated the close connection between the limitation experienced by individuals with disabilities, the design and structure of their environments and the attitude of the general population. At the same time the problems of disability in developing countries were more and more highlighted. In some of those countries the percentage of the population with disabilities was estimated to be very high and, for the most part, persons with disabilities were extremely poor.

Previous international action

6. The rights of persons with disabilities have been the subject of much attention in the United Nations and other international organizations over a long period of time. The most important outcome of the International Year of Disabled Persons, 1981, was the World Programme of Action concerning Disabled Persons, adopted by the General Assembly by its resolution 37/52 of 3 December 1982. The Year and the World Programme of Action provided a strong impetus for progress in the field. They both emphasized the right of persons with disabilities to the same opportunities as other citizens and to an equal share in the improvements in living conditions resulting from economic and social development. There also, for the first time, handicap was defined as a function of the relationship between persons with disabilities and their environment.

7. The Global Meeting of Experts to Review the Implementation of the World Programme of Action concerning Disabled Persons at the Mid-Point of the United Nations Decade of Disabled Persons was held at Stockholm in 1987. It was suggested at the Meeting that a guiding philosophy should be developed to indicate the priorities for action in the years ahead. The basis of that philosophy should be the recognition of the rights of persons with disabilities.

8. Consequently, the Meeting recommended that the General Assembly convene a special conference to draft an international convention on the elimination of all forms of discrimination against persons with disabilities, to be ratified by States by the end of the Decade.

9. A draft outline of the convention was prepared by Italy and presented to the General Assembly at its forty-second session. Further presentations concerning a draft convention were made by Sweden at the forty-fourth session of the Assembly. However, on both occasions, no consensus could be reached on the suitability of such a convention. In the opinion of many representatives, existing human rights documents seemed to guarantee persons with disabilities the same rights as other persons.

Towards standard rules

10. Guided by the deliberations in the General Assembly, the Economic and Social Council, at its first regular session of 1990, finally agreed to concentrate on the elaboration of an international instrument of a different kind. By its resolution 1990/26 of 24 May 1990, the Council authorized the Commission for Social Development to consider, at its thirty-second session, the establishment of an ad hoc open-ended working group of government experts, funded by voluntary contributions, to elaborate standard rules on the equalization of opportunities for disabled children, youth and adults, in close collaboration with the specialized agencies, other intergovernmental bodies and non-governmental organizations, especially organizations of disabled persons. The Council also requested

the Commission to finalize the text of those rules for consideration in 1993 and for submission to the General Assembly at its forty-eighth session.

11. The subsequent discussions in the Third Committee of the General Assembly at the forty-fifth session showed that there was wide support for the new initiative to elaborate standard rules on the equalization of opportunities for persons with disabilities.

12. At the thirty-second session of the Commission for Social Development, the initiative for standard rules received the support of a large number of representatives and discussions led to the adoption of resolution 32/2 of 20 February 1991, in which the Commission decided to establish an ad hoc open-ended working group in accordance with Economic and Social Council resolution 1990/26.

Purpose and content of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities

13. The Standard Rules on the Equalization of Opportunities for Persons with Disabilities have been developed on the basis of the experience gained during the United Nations Decade of Disabled Persons (1983-1992). The International Bill of Human Rights, comprising the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, as well as the World Programme of Action concerning Disabled Persons, constitute the political and moral foundation for the Rules.

14. Although the Rules are not compulsory, they can become international customary rules when they are applied by a great number of States with the intention of respecting a rule in international law. They imply a strong moral and political commitment on behalf of States to take action for the equalization of opportunities for persons with disabilities. Important principles for responsibility, action and cooperation are indicated. Areas of decisive importance for the quality of life and for the achievement of full participation and equality are pointed out. The Rules offer an instrument for policy-making and action to persons with disabilities and their organizations. They provide a basis for technical and economic cooperation among States, the United Nations and other international organizations.

15. The purpose of the Rules is to ensure that girls, boys, women and men with disabilities, as members of their societies, may exercise the same rights and obligations as others. In all societies of the world there are still obstacles preventing persons with disabilities from exercising their rights and freedoms and making it difficult for them to participate fully in the activities of their societies. It is the responsibility of States to take appropriate action to remove such obstacles. Persons with disabilities and their organizations should play an active role as partners in this process. The equalization of opportunities for persons with disabilities is an essential contribution in the general and worldwide effort to mobilize human resources. Special attention may need to be directed towards groups such as women, children, the elderly, the poor, migrant workers, persons with dual or multiple disabilities, indigenous people and ethnic minorities. In addition, there are a large number of refugees with disabilities who have special needs requiring attention.

Fundamental concepts in disability policy

16. The concepts set out below appear throughout the Rules. They are essentially built on the concepts in the World Programme of Action concerning Disabled Persons. In some cases they reflect the development that has taken place during the United Nations Decade of Disabled Persons.

Disability and handicap

17. The term "disability" summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature.

18. The term "handicap" means the loss or limitation of opportunities to take part in the life of the community on an equal level with others. It describes the encounter between the person with a disability and the environment. The purpose of this term is to emphasize the focus on the shortcomings in the environment and in many organized activities in society, for example, information, communication and education, which prevent persons with disabilities from participating on equal terms.

19. The use of the two terms "disability" and "handicap", as defined in paragraphs 17 and 18 above, should be seen in the light of modern disability history. During the 1970s there was a strong reaction among representatives of organizations of persons with disabilities and professionals in the field of disability against the terminology of the time. The terms "disability" and "handicap" were often used in an unclear and confusing way, which gave poor guidance for policy-making and for political action. The terminology reflected a medical and diagnostic approach, which ignored the imperfections and deficiencies of the surrounding society.

20. In 1980, the World Health Organization adopted an international classification of impairments, disabilities and handicaps, which suggested a more precise and at the same time relativistic approach. The International Classification of Impairments, Disabilities, and Handicaps makes a clear distinction between "impairment", "disability" and "handicap". It has been extensively used in areas such as rehabilitation, education, statistics, policy, legislation, demography, sociology, economics and anthropology. Some users have expressed concern that the Classification, in its definition of the term "handicap", may still be considered too medical and too centred on the individual, and may not adequately clarify the interaction between societal conditions or expectations and the abilities of the individual. Those concerns, and others expressed by users during the 12 years since its publication, will be addressed in forthcoming revisions of the Classification.

21. As a result of experience gained in the implementation of the World Programme of Action and of the general discussion that took place during the United Nations Decade of Disabled Persons, there was a deepening of knowledge and extension of understanding concerning disability issues and the terminology used. Current terminology recognizes the necessity of addressing both the individual needs (such as rehabilitation and technical aids) and the shortcomings of the society (various obstacles for participation).

Prevention

22. The term "prevention" means action aimed at preventing the occurrence of physical, intellectual, psychiatric or sensory impairments (primary prevention) or at preventing impairments from causing a permanent functional limitation or disability (secondary prevention). Prevention may include many different types of action, such as primary health care, prenatal and postnatal care, education in nutrition, immunization campaigns against communicable diseases, measures to control endemic diseases, safety regulations, programmes for the prevention of accidents in different environments, including adaptation of workplaces to prevent occupational disabilities and diseases, and prevention of disability resulting from pollution of the environment or armed conflict.

Rehabilitation

23. The term "rehabilitation" refers to a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric and/or social functional levels, thus providing them with the tools to change their lives towards a higher level of independence. Rehabilitation may include measures to provide and/or restore functions, or compensate for the loss or absence of a function or for a functional limitation. The rehabilitation process does not involve initial medical care. It includes a wide range of measures and activities from more basic and general rehabilitation to goal-oriented activities, for instance vocational rehabilitation.

Equalization of opportunities

24. The term "equalization of opportunities" means the process through which the various systems of society and the environment, such as services, activities, information and documentation, are made available to all, particularly to persons with disabilities.

25. The principle of equal rights implies that the needs of each and every individual are of equal importance, that those needs must be made the basis for the planning of societies and that all resources must be employed in such a way as to ensure that

every individual has equal opportunity for participation.
26. Persons with disabilities are members of society and have the right to remain within their local communities. They should receive the support they need within the ordinary structures of education, health, employment and social services.
27. As persons with disabilities achieve equal rights, they should also have equal obligations. As those rights are being achieved, societies should raise their expectations of persons with disabilities. As part of the process of equal opportunities, provision should be made to assist persons with disabilities to assume their full responsibility as members of society.

PREAMBLE

States,
Mindful of the pledge made, under the Charter of the United Nations, to take joint and separate action in cooperation with the Organization to promote higher standards of living, full employment, and conditions of economic and social progress and development,
Reaffirming the commitment to human rights and fundamental freedoms, social justice and the dignity and worth of the human person proclaimed in the Charter,
Recalling in particular the international standards on human rights, which have been laid down in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights,
Underlining that those instruments proclaim that the rights recognized therein should be ensured equally to all individuals without discrimination,
Recalling the Convention on the Rights of the Child, which prohibits discrimination on the basis of disability and requires special measures to ensure the rights of children with disabilities, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which provides for some protective measures against disability,
Recalling also the provisions in the Convention on the Elimination of All Forms of Discrimination against Women to ensure the rights of girls and women with disabilities,
Having regard to the Declaration on the Rights of Disabled Persons, the Declaration on the Rights of Mentally Retarded Persons, the Declaration on Social Progress and Development, the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care and other relevant instruments adopted by the General Assembly,
Also having regard to the relevant conventions and recommendations adopted by the International Labour Organisation, with particular reference to participation in employment without discrimination for persons with disabilities,
Mindful of the relevant recommendations and work of the United Nations Educational, Scientific and Cultural Organization, in particular the World Declaration on Education for All, the World Health Organization, the United Nations Children's Fund and other concerned organizations,
Having regard to the commitment made by States concerning the protection of the environment,
Mindful of the devastation caused by armed conflict and deploring the use of scarce resources in the production of weapons,
Recognizing that the World Programme of Action concerning Disabled Persons and the definition therein of equalization of opportunities represent earnest ambitions on the part of the international community to render those various international instruments and recommendations of practical and concrete significance,
Acknowledging that the objective of the United Nations Decade of Disabled Persons (1983-1992) to implement the World Programme of Action is still valid and requires urgent and continued action,
Recalling that the World Programme of Action is based on concepts that are equally valid in developing and industrialized countries,
Convinced that intensified efforts are needed to achieve the full and equal enjoyment of human rights and participation in society by persons with disabilities,
Re-emphasizing that persons with disabilities, and their parents, guardians, advocates and organizations, must be active partners with States in the planning and implementation of all measures affecting their civil, political, economic, social and cultural rights,
In pursuance of Economic and Social Council resolution 1990/26, and basing themselves on the specific measures required for the attainment by persons with disabilities of equality with others, enumerated in detail in the World Programme of Action,
Have adopted the Standard Rules on the Equalization of Opportunities for Persons with Disabilities outlined below, in order:
(a) To stress that all action in the field of disability presupposes adequate knowledge and experience of the conditions and special needs of persons with disabilities;
(b) To emphasize that the process through which every aspect of societal organization is made accessible to all is a basic objective of socio-economic development;
(c) To outline crucial aspects of social policies in the field of disability, including, as appropriate, the active encouragement of technical and economic cooperation;
(d) To provide models for the political decision-making process required for the attainment of equal opportunities, bearing in mind the widely differing technical and economic levels, the fact that the process must reflect keen understanding of the cultural context within which it takes place and the crucial role of persons with disabilities in it;
(e) To propose national mechanisms for close collaboration among States, the organs of the United Nations system, other intergovernmental bodies and organizations of persons with disabilities;
(f) To propose an effective machinery for monitoring the process by which States seek to attain the equalization of opportunities for persons with disabilities.

I. PRECONDITIONS FOR EQUAL PARTICIPATION

Rule 1 Awareness-raising

States should take action to raise awareness in society about persons with disabilities, their rights, their needs, their potential and their contribution.
1. States should ensure that responsible authorities distribute up-to-date information on available programmes and services to persons with disabilities, their families, professionals in the field and the general public. Information to persons with disabilities should be presented in accessible form.
2. States should initiate and support information campaigns concerning persons with disabilities and disability policies, conveying the message that persons with disabilities are citizens with the same rights and obligations as others, thus justifying measures to remove all obstacles to full participation.
3. States should encourage the portrayal of persons with disabilities by the mass media in a positive way; organizations of persons with disabilities should be consulted on this matter.
4. States should ensure that public education programmes reflect in all their aspects the principle of full participation and equality.
5. States should invite persons with disabilities and their families and organizations to participate in public education programmes concerning disability matters.
6. States should encourage enterprises in the private sector to include disability issues in all aspects of their activity.
7. States should initiate and promote programmes aimed at raising the level of awareness of persons with disabilities concerning their rights and potential. Increased self-reliance and empowerment will assist persons with disabilities to take advantage of the opportunities available to them.
8. Awareness-raising should be an important part of the education of children with disabilities and in rehabilitation programmes. Persons with disabilities could also assist one another in awareness-raising through the activities of their own organizations.
9. Awareness-raising should be part of the education of all children and should be a component of teacher-training courses and training of all professionals.

Rule 2 Medical care

States should ensure the provision of effective medical care to persons with disabilities.
1. States should work towards the provision of programmes run by multidisciplinary teams of professionals for early detection, assessment and treatment of impairment. This could prevent, reduce or eliminate disabling effects. Such programmes should ensure the full participation of persons with disabilities and their families at the individual level, and of organizations of persons with disabilities at the planning and evaluation level.

2. Local community workers should be trained to participate in areas such as early detection of impairments, the provision of primary assistance and referral to appropriate services.
3. States should ensure that persons with disabilities, particularly infants and children, are provided with the same level of medical care within the same system as other members of society.
4. States should ensure that all medical and paramedical personnel are adequately trained and equipped to give medical care to persons with disabilities and that they have access to relevant treatment methods and technology.
5. States should ensure that medical, paramedical and related personnel are adequately trained so that they do not give inappropriate advice to parents, thus restricting options for their children. This training should be an ongoing process and should be based on the latest information available.
6. States should ensure that persons with disabilities are provided with any regular treatment and medicines they may need to preserve or improve their level of functioning.

Rule 3 Rehabilitation

States should ensure the provision of rehabilitation services to persons with disabilities in order for them to reach and sustain their optimum level of independence and functioning.
1. States should develop national rehabilitation programmes for all groups of persons with disabilities. Such programmes should be based on the actual individual needs of persons with disabilities and on the principles of full participation and equality.
2. Such programmes should include a wide range of activities, such as basic skills training to improve or compensate for an affected function, counselling of persons with disabilities and their families, developing self-reliance, and occasional services such as assessment and guidance.
3. All persons with disabilities, including persons with severe and/or multiple disabilities, who require rehabilitation should have access to it.
4. Persons with disabilities and their families should be able to participate in the design and organization of rehabilitation services concerning themselves.
5. All rehabilitation services should be available in the local community where the person with disabilities lives. However, in some instances, in order to attain a certain training objective, special time-limited rehabilitation courses may be organized, where appropriate, in residential form.
6. Persons with disabilities and their families should be encouraged to involve themselves in rehabilitation, for instance as trained teachers, instructors or counsellors.
7. States should draw upon the expertise of organizations of persons with disabilities when formulating or evaluating rehabilitation programmes.

Rule 4 Support services

States should ensure the development and supply of support services, including assistive devices for persons with disabilities, to assist them to increase their level of independence in their daily living and to exercise their rights.
1. States should ensure the provision of assistive devices and equipment, personal assistance and interpreter services, according to the needs of persons with disabilities, as important measures to achieve the equalization of opportunities.
2. States should support the development, production, distribution and servicing of assistive devices and equipment and the dissemination of knowledge about them.
3. To achieve this, generally available technical know-how should be utilized. In States where high-technology industry is available, it should be fully utilized to improve the standard and effectiveness of assistive devices and equipment. It is important to stimulate the development and production of simple and inexpensive devices, using local material and local production facilities when possible. Persons with disabilities themselves could be involved in the production of those devices.
4. States should recognize that all persons with disabilities who need assistive devices should have access to them as appropriate, including financial accessibility. This may mean that assistive devices and equipment should be provided free of charge or at such a low price that persons with disabilities or their families can afford to buy them.
5. In rehabilitation programmes for the provision of assistive devices and equipment, States should consider the special requirements of girls and boys with disabilities concerning the design, durability and age-appropriateness of assistive devices and equipment.
6. States should support the development and provision of personal assistance programmes and interpretation services, especially for persons with severe and/or multiple disabilities. Such programmes would increase the level of participation of persons with disabilities in everyday life at home, at work, in school and during leisure-time activities.
7. Personal assistance programmes should be designed in such a way that the persons with disabilities using the programmes have a decisive influence on the way in which the programmes are delivered.

II. TARGET AREAS FOR EQUAL PARTICIPATION

Rule 5 Accessibility

States should recognize the overall importance of accessibility in the process of the equalization of opportunities in all spheres of society. For persons with disabilities of any kind, States should (a) introduce programmes of action to make the physical environment accessible; and (b) undertake measures to provide access to information and communication.

(a) Access to the physical environment

1. States should initiate measures to remove the obstacles to participation in the physical environment. Such measures should be to develop standards and guidelines and to consider enacting legislation to ensure accessibility to various areas in society, such as housing, buildings, public transport services and other means of transportation, streets and other outdoor environments.
2. States should ensure that architects, construction engineers and others who are professionally involved in the design and construction of the physical environment have access to adequate information on disability policy and measures to achieve accessibility.
3. Accessibility requirements should be included in the design and construction of the physical environment from the beginning of the designing process.
4. Organizations of persons with disabilities should be consulted when standards and norms for accessibility are being developed. They should also be involved locally from the initial planning stage when public construction projects are being designed, thus ensuring maximum accessibility.

(b) Access to information and communication

5. Persons with disabilities and, where appropriate, their families and advocates should have access to full information on diagnosis, rights and available services and programmes, at all stages. Such information should be presented in forms accessible to persons with disabilities.
6. States should develop strategies to make information services and documentation accessible for different groups of persons with disabilities. Braille, tape services, large print and other appropriate technologies should be used to provide access to written information and documentation for persons with visual impairments. Similarly, appropriate technologies should be used to provide access to spoken information for persons with auditory impairments or comprehension difficulties.
7. Consideration should be given to the use of sign language in the education of deaf children, in their families and communities. Sign language interpretation services should also be provided to facilitate the communication between deaf persons and others.
8. Consideration should also be given to the needs of people with other communication disabilities.
9. States should encourage the media, especially television, radio and newspapers, to make their services accessible.
10. States should ensure that new computerized information and service systems offered to the general public are either made initially accessible or are adapted to be made accessible to persons with disabilities.
11. Organizations of persons with disabilities should be consulted when measures to make information services accessible are being developed.

Rule 6 Education

States should recognize the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in integrated settings. They should ensure that the education of persons with disabilities is an integral part of the educational system.

1. General educational authorities are responsible for the education of persons with disabilities in integrated settings. Education for persons with disabilities should form an integral part of national educational planning, curriculum development and school organization.
2. Education in mainstream schools presupposes the provision of interpreter and other appropriate support services. Adequate accessibility and support services, designed to meet the needs of persons with different disabilities, should be provided.
3. Parent groups and organizations of persons with disabilities should be involved in the education process at all levels.
4. In States where education is compulsory it should be provided to girls and boys with all kinds and all levels of disabilities, including the most severe.
5. Special attention should be given in the following areas:
(a) Very young children with disabilities;
(b) Pre-school children with disabilities;
(c) Adults with disabilities, particularly women.
6. To accommodate educational provisions for persons with disabilities in the mainstream, States should:
(a) Have a clearly stated policy, understood and accepted at the school level and by the wider community;
(b) Allow for curriculum flexibility, addition and adaptation;
(c) Provide for quality materials, ongoing teacher training and support teachers.
7. Integrated education and community-based programmes should be seen as complementary approaches in providing cost-effective education and training for persons with disabilities. National community-based programmes should encourage communities to use and develop their resources to provide local education to persons with disabilities.
8. In situations where the general school system does not yet adequately meet the needs of all persons with disabilities, special education may be considered. It should be aimed at preparing students for education in the general school system. The quality of such education should reflect the same standards and ambitions as general education and should be closely linked to it. At a minimum, students with disabilities should be afforded the same portion of educational resources as students without disabilities. States should aim for the gradual integration of special education services into mainstream education. It is acknowledged that in some instances special education may currently be considered to be the most appropriate form of education for some students with disabilities.
9. Owing to the particular communication needs of deaf and deaf/blind persons, their education may be more suitably provided in schools for such persons or special classes and units in mainstream schools. At the initial stage, in particular, special attention needs to be focused on culturally sensitive instruction that will result in effective communication skills and maximum independence for people who are deaf or deaf/blind.

Rule 7 Employment

States should recognize the principle that persons with disabilities must be empowered to exercise their human rights, particularly in the field of employment. In both rural and urban areas they must have equal opportunities for productive and gainful employment in the labour market.
1. Laws and regulations in the employment field must not discriminate against persons with disabilities and must not raise obstacles to their employment.
2. States should actively support the integration of persons with disabilities into open employment. This active support could occur through a variety of measures, such as vocational training, incentive-oriented quota schemes, reserved or designated employment, loans or grants for small business, exclusive contracts or priority production rights, tax concessions, contract compliance or other technical or financial assistance to enterprises employing workers with disabilities. States should also encourage employers to make reasonable adjustments to accommodate persons with disabilities.
3. States' action programmes should include:
(a) Measures to design and adapt workplaces and work premises in such a way that they become accessible to persons with different disabilities;
(b) Support for the use of new technologies and the development and production of assistive devices, tools and equipment and measures to facilitate access to such devices and equipment for persons with disabilities to enable them to gain and maintain employment;
(c) Provision of appropriate training and placement and ongoing support such as personal assistance and interpreter services.
4. States should initiate and support public awareness-raising campaigns designed to overcome negative attitudes and prejudices concerning workers with disabilities.
5. In their capacity as employers, States should create favourable conditions for the employment of persons with disabilities in the public sector.
6. States, workers' organizations and employers should cooperate to ensure equitable recruitment and promotion policies, employment conditions, rates of pay, measures to improve the work environment in order to prevent injuries and impairments and measures for the rehabilitation of employees who have sustained employment-related injuries.
7. The aim should always be for persons with disabilities to obtain employment in the open labour market. For persons with disabilities whose needs cannot be met in open employment, small units of sheltered or supported employment may be an alternative. It is important that the quality of such programmes be assessed in terms of their relevance and sufficiency in providing opportunities for persons with disabilities to gain employment in the labour market.
8. Measures should be taken to include persons with disabilities in training and employment programmes in the private and informal sectors.
9. States, workers' organizations and employers should cooperate with organizations of persons with disabilities concerning all measures to create training and employment opportunities, including flexible hours, part-time work, job-sharing, self-employment and attendant care for persons with disabilities.

Rule 8 Income maintenance and social security

States are responsible for the provision of social security and income maintenance for persons with disabilities.
1. States should ensure the provision of adequate income support to persons with disabilities who, owing to disability or disability-related factors, have temporarily lost or received a reduction in their income or have been denied employment opportunities. States should ensure that the provision of support takes into account the costs frequently incurred by persons with disabilities and their families as a result of the disability.
2. In countries where social security, social insurance or other social welfare schemes exist or are being developed for the general population, States should ensure that such systems do not exclude or discriminate against persons with disabilities.
3. States should also ensure the provision of income support and social security protection to individuals who undertake the care of a person with a disability.
4. Social security systems should include incentives to restore the income-earning capacity of persons with disabilities. Such systems should provide or contribute to the organization, development and financing of vocational training. They should also assist with placement services.
5. Social security programmes should also provide incentives for persons with disabilities to seek employment in order to establish or re-establish their income-earning capacity.
6. Income support should be maintained as long as the disabling conditions remain in a manner that does not discourage persons with disabilities from seeking employment. It should only be reduced or terminated when persons with disabilities achieve adequate and secure income.
7. States, in countries where social security is to a large extent provided by the private sector, should encourage local communities, welfare organizations and families to develop self-help measures and incentives for employment or employment-related activities for persons with disabilities.

Rule 9 Family life and personal integrity

States should promote the full participation of persons with disabilities in family life. They should promote their right to personal integrity and ensure that laws do not discriminate against persons with disabilities with respect to sexual relationships, marriage and parenthood.
1. Persons with disabilities should be enabled to live with their families. States

should encourage the inclusion in family counselling of appropriate modules regarding disability and its effects on family life. Respite-care and attendant-care services should be made available to families which include a person with disabilities. States should remove all unnecessary obstacles to persons who want to foster or adopt a child or adult with disabilities.
2. Persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood. Taking into account that persons with disabilities may experience difficulties in getting married and setting up a family, States should encourage the availability of appropriate counselling. Persons with disabilities must have the same access as others to family-planning methods, as well as to information in accessible form on the sexual functioning of their bodies.
3. States should promote measures to change negative attitudes towards marriage, sexuality and parenthood of persons with disabilities, especially of girls and women with disabilities, which still prevail in society. The media should be encouraged to play an important role in removing such negative attitudes.
4. Persons with disabilities and their families need to be fully informed about taking precautions against sexual and other forms of abuse. Persons with disabilities are particularly vulnerable to abuse in the family, community or institutions and need to be educated on how to avoid the occurrence of abuse, recognize when abuse has occurred and report on such acts.

Rule 10 Culture

States will ensure that persons with disabilities are integrated into and can participate in cultural activities on an equal basis.
1. States should ensure that persons with disabilities have the opportunity to utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of their community, be they in urban or rural areas. Examples of such activities are dance, music, literature, theatre, plastic arts, painting and sculpture. Particularly in developing countries, emphasis should be placed on traditional and contemporary art forms, such as puppetry, recitation and story-telling.
2. States should promote the accessibility to and availability of places for cultural performances and services, such as theatres, museums, cinemas and libraries, to persons with disabilities.
3. States should initiate the development and use of special technical arrangements to make literature, films and theatre accessible to persons with disabilities.

Rule 11 Recreation and sports

States will take measures to ensure that persons with disabilities have equal opportunities for recreation and sports.
1. States should initiate measures to make places for recreation and sports, hotels, beaches, sports arenas, gym halls, etc., accessible to persons with disabilities. Such measures should encompass support for staff in recreation and sports programmes, including projects to develop methods of accessibility, and participation, information and training programmes.
2. Tourist authorities, travel agencies, hotels, voluntary organizations and others involved in organizing recreational activities or travel opportunities should offer their services to all, taking into account the special needs of persons with disabilities. Suitable training should be provided to assist that process.
3. Sports organizations should be encouraged to develop opportunities for participation by persons with disabilities in sports activities. In some cases, accessibility measures could be enough to open up opportunities for participation. In other cases, special arrangements or special games would be needed. States should support the participation of persons with disabilities in national and international events.
4. Persons with disabilities participating in sports activities should have access to instruction and training of the same quality as other participants.
5. Organizers of sports and recreation should consult with organizations of persons with disabilities when developing their services for persons with disabilities.

Rule 12 Religion

States will encourage measures for equal participation by persons with disabilities in the religious life of their communities.
1. States should encourage, in consultation with religious authorities, measures to eliminate discrimination and make religious activities accessible to persons with disabilities.
2. States should encourage the distribution of information on disability matters to religious institutions and organizations. States should also encourage religious authorities to include information on disability policies in the training for religious professions, as well as in religious education programmes.
3. They should also encourage the accessibility of religious literature to persons with sensory impairments.
4. States and/or religious organizations should consult with organizations of persons with disabilities when developing measures for equal participation in religious activities.

III. IMPLEMENTATION MEASURES

Rule 13 Information and research

States assume the ultimate responsibility for the collection and dissemination of information on the living conditions of persons with disabilities and promote comprehensive research on all aspects, including obstacles that affect the lives of persons with disabilities.
1. States should, at regular intervals, collect gender-specific statistics and other information concerning the living conditions of persons with disabilities. Such data collection could be conducted in conjunction with national censuses and household surveys and could be undertaken in close collaboration, *inter alia*, with universities, research institutes and organizations of persons with disabilities. The data collection should include questions on programmes and services and their use.
2. States should consider establishing a data bank on disability, which would include statistics on available services and programmes as well as on the different groups of persons with disabilities. They should bear in mind the need to protect individual privacy and personal integrity.
3. States should initiate and support programmes of research on social, economic and participation issues that affect the lives of persons with disabilities and their families. Such research should include studies on the causes, types and frequencies of disabilities, the availability and efficacy of existing programmes and the need for development and evaluation of services and support measures.
4. States should develop and adopt terminology and criteria for the conduct of national surveys, in cooperation with organizations of persons with disabilities.
5. States should facilitate the participation of persons with disabilities in data collection and research. To undertake such research States should particularly encourage the recruitment of qualified persons with disabilities.
6. States should support the exchange of research findings and experiences.
7. States should take measures to disseminate information and knowledge on disability to all political and administration levels within national, regional and local spheres.

Rule 14 Policy-making and planning

States will ensure that disability aspects are included in all relevant policy-making and national planning.
1. States should initiate and plan adequate policies for persons with disabilities at the national level, and stimulate and support action at regional and local levels.
2. States should involve organizations of persons with disabilities in all decision-making relating to plans and programmes concerning persons with disabilities or affecting their economic and social status.
3. The needs and concerns of persons with disabilities should be incorporated into general development plans and not be treated separately.
4. The ultimate responsibility of States for the situation of persons with disabilities does not relieve others of their responsibility. Anyone in charge of services, activities or the provision of information in society should be encouraged to accept responsibility for making such programmes available to persons with disabilities.
5. States should facilitate the development by local communities of programmes and measures for persons with disabilities. One way of doing this could be to develop manuals or check-lists and provide training programmes for local staff.

Rule 15 Legislation

States have a responsibility to create the legal bases for measures to achieve the

objectives of full participation and equality for persons with disabilities.
1. National legislation, embodying the rights and obligations of citizens, should include the rights and obligations of persons with disabilities. States are under an obligation to enable persons with disabilities to exercise their rights, including their human, civil and political rights, on an equal basis with other citizens. States must ensure that organizations of persons with disabilities are involved in the development of national legislation concerning the rights of persons with disabilities, as well as in the ongoing evaluation of that legislation.
2. Legislative action may be needed to remove conditions that may adversely affect the lives of persons with disabilities, including harassment and victimization. Any discriminatory provisions against persons with disabilities must be eliminated. National legislation should provide for appropriate sanctions in case of violations of the principles of non-discrimination.
3. National legislation concerning persons with disabilities may appear in two different forms. The rights and obligations may be incorporated in general legislation or contained in special legislation. Special legislation for persons with disabilities may be established in several ways:
(a) By enacting separate legislation, dealing exclusively with disability matters;
(b) By including disability matters within legislation on particular topics;
(c) By mentioning persons with disabilities specifically in the texts that serve to interpret existing legislation.
A combination of those different approaches might be desirable. Affirmative action provisions may also be considered.
4. States may consider establishing formal statutory complaints mechanisms in order to protect the interests of persons with disabilities.

Rule 16 Economic policies

States have the financial responsibility for national programmes and measures to create equal opportunities for persons with disabilities.
1. States should include disability matters in the regular budgets of all national, regional and local government bodies.
2. States, non-governmental organizations and other interested bodies should interact to determine the most effective ways of supporting projects and measures relevant to persons with disabilities.
3. States should consider the use of economic measures (loans, tax exemptions, earmarked grants, special funds, and so on) to stimulate and support equal participation by persons with disabilities in society.
4. In many States it may be advisable to establish a disability development fund, which could support various pilot projects and self-help programmes at the grassroots level.

Rule 17 Coordination of work

States are responsible for the establishment and strengthening of national coordinating committees, or similar bodies, to serve as a national focal point on disability matters.
1. The national coordinating committee or similar bodies should be permanent and based on legal as well as appropriate administrative regulation.
2. A combination of representatives of private and public organizations is most likely to achieve an intersectoral and multidisciplinary composition. Representatives could be drawn from concerned government ministries, organizations of persons with disabilities and non-governmental organizations.
3. Organizations of persons with disabilities should have considerable influence in the national coordinating committee in order to ensure proper feedback of their concerns.
4. The national coordinating committee should be provided with sufficient autonomy and resources to fulfil its responsibilities in relation to its decision-making capacities. It should report to the highest governmental level.

Rule 18 Organizations of persons with disabilities

States should recognize the right of the organizations of persons with disabilities to represent persons with disabilities at national, regional and local levels. States should also recognize the advisory role of organizations of persons with disabilities in decision-making on disability matters.
1. States should encourage and support economically and in other ways the formation and strengthening of organizations of persons with disabilities, family members and/or advocates. States should recognize that those organizations have a role to play in the development of disability policy.
2. States should establish ongoing communication with organizations of persons with disabilities and ensure their participation in the development of government policies.
3. The role of organizations of persons with disabilities could be to identify needs and priorities, to participate in the planning, implementation and evaluation of services and measures concerning the lives of persons with disabilities, and to contribute to public awareness and to advocate change.
4. As instruments of self-help, organizations of persons with disabilities provide and promote opportunities for the development of skills in various fields, mutual support among members and information sharing.
5. Organizations of persons with disabilities could perform their advisory role in many different ways such as having permanent representation on boards of government-funded agencies, serving on public commissions and providing expert knowledge on different projects.
6. The advisory role of organizations of persons with disabilities should be ongoing in order to develop and deepen the exchange of views and information between the State and the organizations.
7. Organizations should be permanently represented on the national coordinating committee or similar bodies.
8. The role of local organizations of persons with disabilities should be developed and strengthened to ensure that they influence matters at the community level.

Rule 19 Personnel training

States are responsible for ensuring the adequate training of personnel, at all levels, involved in the planning and provision of programmes and services concerning persons with disabilities.
1. States should ensure that all authorities providing services in the disability field give adequate training to their personnel.
2. In the training of professionals in the disability field, as well as in the provision of information on disability in general training programmes, the principle of full participation and equality should be appropriately reflected.
3. States should develop training programmes in consultation with organizations of persons with disabilities, and persons with disabilities should be involved as teachers, instructors or advisers in staff training programmes.
4. The training of community workers is of great strategic importance, particularly in developing countries. It should involve persons with disabilities and include the development of appropriate values, competence and technologies as well as skills which can be practised by persons with disabilities, their parents, families and members of the community.

Rule 20 National monitoring and evaluation of disability programmes in the implementation of the Rules

States are responsible for the continuous monitoring and evaluation of the implementation of national programmes and services concerning the equalization of opportunities for persons with disabilities.
1. States should periodically and systematically evaluate national disability programmes and disseminate both the bases and the results of the evaluations.
2. States should develop and adopt terminology and criteria for the evaluation of disability-related programmes and services.
3. Such criteria and terminology should be developed in close cooperation with organizations of persons with disabilities from the earliest conceptual and planning stages.
4. States should participate in international cooperation in order to develop common standards for national evaluation in the disability field. States should encourage national coordinating committees to participate also.
5. The evaluation of various programmes in the disability field should be built in at the planning stage, so that the overall efficacy in fulfilling their policy objectives can be evaluated.

Rule 21 Technical and economic cooperation

States, both industrialized and developing, have the responsibility to cooperate in and take measures for the improvement of the living conditions of persons with disabilities in developing countries.
1. Measures to achieve the equalization of opportunities of persons with disabilities,

including refugees with disabilities, should be integrated into general development programmes.
2. Such measures must be integrated into all forms of technical and economic cooperation, bilateral and multilateral, governmental and non-governmental. States should bring up disability issues in discussions on such cooperation with their counterparts.
3. When planning and reviewing programmes of technical and economic cooperation, special attention should be given to the effects of such programmes on the situation of persons with disabilities. It is of the utmost importance that persons with disabilities and their organizations are consulted on any development projects designed for persons with disabilities. They should be directly involved in the development, implementation and evaluation of such projects.
4. Priority areas for technical and economic cooperation should include:
(a) The development of human resources through the development of skills, abilities and potentials of persons with disabilities and the initiation of employment-generating activities for and of persons with disabilities;
(b) The development and dissemination of appropriate disability-related technologies and know-how.
5. States are also encouraged to support the formation and strengthening of organizations of persons with disabilities.
6. States should take measures to improve the knowledge of disability issues among staff involved at all levels in the administration of technical and economic cooperation programmes.

Rule 22 International cooperation

States will participate actively in international cooperation concerning policies for the equalization of opportunities for persons with disabilities.
1. Within the United Nations, the specialized agencies and other concerned intergovernmental organizations, States should participate in the development of disability policy.
2. Whenever appropriate, States should introduce disability aspects in general negotiations concerning standards, information exchange, development programmes, etc.
3. States should encourage and support the exchange of knowledge and experience among:
(a) Non-governmental organizations concerned with disability issues;
(b) Research institutions and individual researchers involved in disability issues;
(c) Representatives of field programmes and of professional groups in the disability field;
(d) Organizations of persons with disabilities;
(e) National coordinating committees.
4. States should ensure that the United Nations and the specialized agencies, as well as all intergovernmental and interparliamentary bodies, at global and regional levels, include in their work the global and regional organizations of persons with disabilities.

IV. Monitoring mechanism

1. The purpose of a monitoring mechanism is to further the effective implementation of the Rules. It will assist each State in assessing its level of implementation of the Rules and in measuring its progress. The monitoring should identify obstacles and suggest suitable measures that would contribute to the successful implementation of the Rules. The monitoring mechanism will recognize the economic, social and cultural features existing in individual States. An important element should also be the provision of advisory services and the exchange of experience and information between States.
2. The Rules shall be monitored within the framework of the sessions of the Commission for Social Development. A Special Rapporteur with relevant and extensive experience in disability issues and international organizations shall be appointed, if necessary, funded by extrabudgetary resources, for three years to monitor the implementation of the Rules.
3. International organizations of persons with disabilities having consultative status with the Economic and Social Council and organizations representing persons with disabilities who have not yet formed their own organizations should be invited to create among themselves a panel of experts, on which organizations of persons with disabilities shall have a majority, taking into account the different kinds of disabilities and necessary equitable geographical distribution, to be consulted by the Special Rapporteur and, when appropriate, by the Secretariat.
4. The panel of experts will be encouraged by the Special Rapporteur to review, advise and provide feedback and suggestions on the promotion, implementation and monitoring of the Rules.
5. The Special Rapporteur shall send a set of questions to States, entities within the United Nations system, and intergovernmental and non-governmental organizations, including organizations of persons with disabilities. The set of questions should address implementation plans for the Rules in States. The questions should be selective in nature and cover a number of specific rules for in-depth evaluation. In preparing the questions the Special Rapporteur should consult with the panel of experts and the Secretariat.
6. The Special Rapporteur shall seek to establish a direct dialogue not only with States but also with local non-governmental organizations, seeking their views and comments on any information intended to be included in the reports. The Special Rapporteur shall provide advisory services on the implementation and monitoring of the Rules and assistance in the preparation of replies to the sets of questions.
7. The Department for Policy Coordination and Sustainable Development of the Secretariat, as the United Nations focal point on disability issues, the United Nations Development Programme and other entities and mechanisms within the United Nations system, such as the regional commissions and specialized agencies and inter-agency meetings, shall cooperate with the Special Rapporteur in the implementation and monitoring of the Rules at the national level.
8. The Special Rapporteur, assisted by the Secretariat, shall prepare reports for submission to the Commission for Social Development at its thirty-fourth and thirty-fifth sessions. In preparing such reports, the Rapporteur should consult with the panel of experts.
9. States should encourage national coordinating committees or similar bodies to participate in implementation and monitoring. As the focal points on disability matters at the national level, they should be encouraged to establish procedures to coordinate the monitoring of the Rules. Organizations of persons with disabilities should be encouraged to be actively involved in the monitoring of the process at all levels.
10. Should extrabudgetary resources be identified, one or more positions of interregional adviser on the Rules should be created to provide direct services to States, including:
(a) The organization of national and regional training seminars on the content of the Rules;
(b) The development of guidelines to assist in strategies for implementation of the Rules;
(c) Dissemination of information about best practices concerning implementation of the Rules.
11. At its thirty-fourth session, the Commission for Social Development should establish an open-ended working group to examine the Special Rapporteur's report and make recommendations on how to improve the application of the Rules. In examining the Special Rapporteur's report, the Commission, through its open-ended working group, shall consult international organizations of persons with disabilities and specialized agencies, in accordance with rules 71 and 76 of the rules of procedure of the functional commissions of the Economic and Social Council.
12. At its session following the end of the Special Rapporteur's mandate, the Commission should examine the possibility of either renewing that mandate, appointing a new Special Rapporteur or considering another monitoring mechanism, and should make appropriate recommendations to the Economic and Social Council.
13. States should be encouraged to contribute to the United Nations Voluntary Fund on Disability in order to further the implementation of the Rules.

ILO Worst Forms of Child Labour Convention, 1999 (No.182)

Adopted by the General Conference of the International Labour Organization at its eighty-seventh session on 17 June 1999
Entry into force: 19 November 2000, in accordance with article 10

Preamble

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999, and

Considering the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, as the main priority for national and international action, including international cooperation and assistance, to complement the Convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour, and

Considering that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families, and

Recalling the resolution concerning the elimination of child labour adopted by the International Labour Conference at its 83rd Session in 1996, and

Recognizing that child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education, and

Recalling the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, and

Recalling the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, and

Recalling that some of the worst forms of child labour are covered by other international instruments, in particular the Forced Labour Convention, 1930, and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, and

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

Adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Convention, which may be cited as the Worst Forms of Child Labour Convention, 1999:

Article 1
Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

Article 2
For the purposes of this Convention, the term "child" shall apply to all persons under the age of 18.

Article 3
For the purposes of this Convention, the term " the worst forms of child labour" comprises:
(a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
(b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
(c) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
(d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Article 4
1. The types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labour Recommendation, 1999.
2. The competent authority, after consultation with the organizations of employers and workers concerned, shall identify where the types of work so determined exist.
3. The list of the types of work determined under paragraph 1 of this Article shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned.

Article 5
Each Member shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention.

Article 6
1. Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.
2. Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate.

Article 7
1. Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.
2. Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:
(a) Prevent the engagement of children in the worst forms of child labour;
(b) Provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
(c) Ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
(d) Identify and reach out to children at special risk; and
(e) Take account of the special situation of girls.
3. Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

Article 8
Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

Article 9
The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 10
1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 11
1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 12
1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and acts of denunciation communicated by the Members of the Organization.
2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 13
The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 14
At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 15
1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
(a) The ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 11 above, if and when the new revising Convention shall have come into force;
(b) As from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 16
The English and French versions of the text of this Convention are equally authoritative.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000

Annex II

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, *inter alia*, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purposes of this Protocol are:

(a) To prevent and combat trafficking in persons, paying particular attention to women and children;

(b To protect and assist the victims of such trafficking, with full respect for their human rights; and

(c) To promote cooperation among States Parties in order to meet those objectives.

Article 3

Use of terms

For the purposes of this Protocol:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age.

Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

Article 6
Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, *inter alia*, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
(a) Information on relevant court and administrative proceedings;
(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
(a) Appropriate housing;
(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
(c) Medical, psychological and material assistance; and
(d) Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7
Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.
2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8
Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.
3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.
6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9
Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:
(a) To prevent and combat trafficking in persons; and
(b) To protect victims of trafficking in persons, especially women and children, from revictimization.
2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.
3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10
Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:
(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such rafficking, and possible measures for detecting them.
2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11
Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls

as may be necessary to prevent and detect trafficking in persons.
2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.
3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.
6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication.

Article 12
Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:
(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13
Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions

Article 14
Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.
2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15
Settlement of disputes

l. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16
Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.
2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.
3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.
4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17
Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18
Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.
4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of

an instrument of ratification, acceptance or approval of such amendment.
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19
Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.
2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
In witness whereof, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

Convention on the Rights of Persons with Disabilities

Adopted by General Assembley resolution 61/106 of 13 December 2006

Preamble

The States Parties to the present Convention,

(a) *Recalling* the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,

(b) *Recognizing* that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,

(c) *Reaffirming* the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,

(d) *Recalling* the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,

(e) *Recognizing* that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others,

(f) *Recognizing* the importance of the principles and policy guidelines contained in the World Programme of Action concerning Disabled Persons and in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in influencing the promotion, formulation and evaluation of the policies, plans, programmes and actions at the national, regional and international levels to further equalize opportunities for persons with disabilities,

(g) *Emphasizing* the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development,

(h) *Recognizing* also that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person,

(i) *Recognizing* further the diversity of persons with disabilities,

(j) *Recognizing* the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support,

(k) *Concerned* that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world,

(l) *Recognizing* the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries,

(m) *Recognizing* the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty,

(n) *Recognizing* the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,

(o) *Considering* that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them,

(p) *Concerned* about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national,

ethnic, indigenous or social origin, property, birth, age or other status,
(q) *Recognizing* that women and girls with disabilities are often at greater risk, both within and outside the home of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,
(r) *Recognizing* that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child,
(s) *Emphasizing* the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,
(t) *Highlighting* the fact that the majority of persons with disabilities live in conditions of poverty, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities,
(u) *Bearing in mind* that conditions of peace and security based on full respect for the purposes and principles contained in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of persons with disabilities, in particular during armed conflicts and foreign occupation,
(v) *Recognizing* the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,
(w) *Realizing* that the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights,
(x) *Convinced* that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities,
(y) *Convinced* that a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,
Have agreed as follows:

Article 1 Purpose

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.
Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Article 2 Definitions

For the purposes of the present Convention:
"Communication" includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;
"Language" includes spoken and signed languages and other forms of non-spoken languages;
"Discrimination on the basis of disability" means any 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. It includes all forms of discrimination, including denial of reasonable accommodation;
"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;
"Universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

Article 3 General principles

The principles of the present Convention shall be:
(a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
(b) Non-discrimination;
(c) Full and effective participation and inclusion in society;
(d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
(e) Equality of opportunity;
(f) Accessibility;
(g) Equality between men and women;
(h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Article 4 General obligations

1. 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 disability. To this end, States Parties undertake:
(a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;
(b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
(c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;
(d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;
(e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;
(f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;
(g) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;
(h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;

(i) To promote the training of professionals and staff working with persons with disabilities in the rights recognized in this Convention so as to better provide the assistance and services guaranteed by those rights.
2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.
3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.
4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.
5. The provisions of the present Convention shall extend to all parts of federal states without any limitations or exceptions.

Article 5 Equality and non-discrimination

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.
4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

Article 6 Women with disabilities

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.
2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

Article 7 Children with disabilities

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.
3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

Article 8 Awareness-raising

1. States Parties undertake to adopt immediate, effective and appropriate measures:
(a) To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;
(b) To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;
(c) To promote awareness of the capabilities and contributions of persons with disabilities.
2. Measures to this end include:
(a) Initiating and maintaining effective public awareness campaigns designed:
(i) To nurture receptiveness to the rights of persons with disabilities;
(ii) To promote positive perceptions and greater social awareness towards persons with disabilities;
(iii) To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;
(b) Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;
(c) Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;
(d) Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

Article 9 Accessibility

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, *inter alia*:
(a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
(b) Information, communications and other services, including electronic services and emergency services.
2. States Parties shall also take appropriate measures to:
(a) Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
(b) Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
(c) Provide training for stakeholders on accessibility issues facing persons with disabilities;
(d) Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
(e) Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
(f) Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
(g) Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
(h) Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

Article 10 Right to life

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

Article 11 Situations of risk and humanitarian emergencies

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

Article 12 Equal recognition before the law

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity

on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.
5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

Article 13 Access to justice

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Article 14 Liberty and security of the person

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:
(a) Enjoy the right to liberty and security of person;
(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.
2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.

Article 15 Freedom from torture or cruel, inhuman or degrading treatment or punishment

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.
2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

Article 16 Freedom from exploitation, violence and abuse

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.
2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, *inter alia*, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.
3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.
4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.
5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

Article 17 Protecting the integrity of the person

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

Article 18 Liberty of movement and nationality

1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:
(a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;
(b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;
(c) Are free to leave any country, including their own;
(d) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.
2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

Article 19 Living independently and being included in the community

States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:
(a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
(b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
(c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

Article 20 Personal mobility

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:
(a) Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;
(b) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;
(c) Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;
(d) Encouraging entities that produce mobility aids, devices and assistive technologies

to take into account all aspects of mobility for persons with disabilities.

Article 21 Freedom of expression and opinion, and access to information

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:
(a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
(b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
(c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;
(d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;
(e) Recognizing and promoting the use of sign languages.

Article 22 Respect for privacy

1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.
2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

Article 23 Respect for home and the family

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:
(a) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;
(b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;
(c) Persons with disabilities, including children, retain their fertility on an equal basis with others.
2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.
3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.
4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.
5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

Article 24 Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:
(a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
(b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
(c) Enabling persons with disabilities to participate effectively in a free society.
2. In realizing this right, States Parties shall ensure that:
(a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
(b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
(c) Reasonable accommodation of the individual's requirements is provided;
(d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
(e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.
3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:
(a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
(b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
(c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.
4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.
5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

Article 25 Health

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:
(a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;
(b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early

identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;
(c) Provide these health services as close as possible to people's own communities, including in rural areas;
(d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, *inter alia*, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;
(e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;
(f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

Article 26 Habilitation and rehabilitation

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:
(a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;
(b) Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.
2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.
3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.

Article 27 Work and employment

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, *inter alia*:
(a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
(b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
(c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
(d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
(e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;
(f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
(g) Employ persons with disabilities in the public sector;
(h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
(i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
(j) Promote the acquisition by persons with disabilities of work experience in the open labour market;
(k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.
2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

Article 28 Adequate standard of living and social protection

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.
2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:
(a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
(b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
(c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;
(d) To ensure access by persons with disabilities to public housing programmes;
(e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

Article 29 Participation in political and public life

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:
(a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, *inter alia*, by:
(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
(ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;
(iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;
(b) Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:
(i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;
(ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

Article 30 Participation in cultural life, recreation, leisure and sport

1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to

ensure that persons with disabilities:
(a) Enjoy access to cultural materials in accessible formats;
(b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;
(c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.
2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.
3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.
4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.
5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:
(a) To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;
(b) To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;
(c) To ensure that persons with disabilities have access to sporting, recreational and tourism venues;
(d) To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;
(e) To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.

Article 31 Statistics and data collection

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:
(a) Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;
(b) Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.
2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.
3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.

Article 32 International cooperation

1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, *inter alia*:
(a) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;
(b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;
(c) Facilitating cooperation in research and access to scientific and technical knowledge;
(d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.
2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.

Article 33 National implementation and monitoring

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.
2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.
3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.

Article 34 Committee on the Rights of Persons with Disabilities

1. There shall be established a Committee on the Rights of Persons with Disabilities (hereafter referred to as "the Committee"), which shall carry out the functions hereinafter provided.
2. The Committee shall consist, at the time of entry into force of the present Convention, of twelve experts. After an additional sixty ratifications or accessions to the Convention, the membership of the Committee shall increase by six members, attaining a maximum number of eighteen members.
3. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence and experience in the field covered by the present Convention. When nominating their candidates, States Parties are invited to give due consideration to the provision set out in article 4.3 of the present Convention.
4. The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities.
5. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties from among their nationals at meetings of the Conference of States Parties. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
6. The initial election shall be held no later than six months after the date of entry into force of the present Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit the nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the State Parties which have nominated them, and shall submit it to the States Parties to the present Convention.
7. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of six of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these six members shall be chosen by lot by the chairperson of the meeting referred to in paragraph 5 of this article.
8. The election of the six additional members of the Committee shall be held on the occasion of regular elections, in accordance with the relevant provisions of this article.

9. If a member of the Committee dies or resigns or declares that for any other cause she or he can no longer perform her or his duties, the State Party which nominated the member shall appoint another expert possessing the qualifications and meeting the requirements set out in the relevant provisions of this article, to serve for the remainder of the term.
10. The Committee shall establish its own rules of procedure.
11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention, and shall convene its initial meeting.
12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.
13. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 35 Reports by States Parties

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the entry into force of the present Convention for the State Party concerned.
2. Thereafter, States Parties shall submit subsequent reports at least every four years and further whenever the Committee so requests.
3. The Committee shall decide any guidelines applicable to the content of the reports.
4. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports, repeat information previously provided. When preparing reports to the Committee, States Parties are invited to consider doing so in an open and transparent process and to give due consideration to the provision set out in article 4.3 of the present Convention.
5. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 36 Consideration of reports

1. Each report shall be considered by the Committee, which shall make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned. The State Party may respond with any information it chooses to the Committee. The Committee may request further information from States Parties relevant to the implementation of the present Convention.
2. If a State Party is significantly overdue in the submission of a report, the Committee may notify the State Party concerned of the need to examine the implementation of the present Convention in that State Party, on the basis of reliable information available to the Committee, if the relevant report is not submitted within three months following the notification. The Committee shall invite the State Party concerned to participate in such examination. Should the State Party respond by submitting the relevant report, the provisions of paragraph 1 of this article will apply.
3. The Secretary-General of the United Nations shall make available the reports to all States Parties.
4. States Parties shall make their reports widely available to the public in their own countries and facilitate access to the suggestions and general recommendations relating to these reports.
5. The Committee shall transmit, as it may consider appropriate, to the specialized agencies, funds and programmes of the United Nations, and other competent bodies, reports from States Parties in order to address a request or indication of a need for technical advice or assistance contained therein, along with the Committee's observations and recommendations, if any, on these requests or indications.

Article 37 Cooperation between States Parties and the Committee

1. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate.
2. In its relationship with States Parties, the Committee shall give due consideration to ways and means of enhancing national capacities for the implementation of the present Convention, including through international cooperation.

Article 38 Relationship of the Committee with other bodies

In order to foster the effective implementation of the present Convention and to encourage international cooperation in the field covered by the present Convention:
(a) The specialized agencies and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite specialized agencies and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;
(b) The Committee, as it discharges its mandate, shall consult, as appropriate, other relevant bodies instituted by international human rights treaties, with a view to ensuring the consistency of their respective reporting guidelines, suggestions and general recommendations, and avoiding duplication and overlap in the performance of their functions.

Article 39 Report of the Committee

The Committee shall report every two years to the General Assembly and to the Economic and Social Council on its activities, and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

Article 40 Conference of States Parties

1. The States Parties shall meet regularly in a Conference of States Parties in order to consider any matter with regard to the implementation of the present Convention.
2. No later than six months after the entry into force of the present Convention, the Conference of the States Parties shall be convened by the Secretary-General of the United Nations. The subsequent meetings shall be convened by the Secretary-General of the United Nations biennially or upon the decision of the Conference of States Parties.

Article 41 Depositary

The Secretary-General of the United Nations shall be the depositary of the present Convention.

Article 42 Signature

The present Convention shall be open for signature by all States and by regional integration organizations at United Nations Headquarters in New York as of 30 March 2007.

Article 43 Consent to be bound

The present Convention shall be subject to ratification by signatory States and to formal confirmation by signatory regional integration organizations. It shall be open for accession by any State or regional integration organization which has not signed the Convention.

Article 44 Regional integration organizations

1. "Regional integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention. Such organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by this Convention. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.
2. References to "States Parties" in the present Convention shall apply to such organizations within the limits of their competence.
3. For the purposes of article 45, paragraph 1, and article 47, paragraphs 2 and 3, any instrument deposited by a regional integration organization shall not be counted.
4. Regional integration organizations, in matters within their competence, may exercise their right to vote in the Conference of States Parties, with a number of votes

equal to the number of their member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Article 45 Entry into force

1. The present Convention shall enter into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession.
2. For each State or regional integration organization ratifying, formally confirming or acceding to the Convention after the deposit of the twentieth such instrument, the Convention shall enter into force on the thirtieth day after the deposit of its own such instrument.

Article 46 Reservations

1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.
2. Reservations may be withdrawn at any time.

Article 47 Amendments

1. Any State Party may propose an amendment to the present Convention and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a conference of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and thereafter to all States Parties for acceptance.
2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.
3. If so decided by the Conference of States Parties by consensus, an amendment adopted and approved in accordance with paragraph 1 of this article which relates exclusively to articles 34, 38, 39 and 40 shall enter into force for all States Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment.

Article 48 Denunciation

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

Article 49 Accessible format

The text of the present Convention shall be made available in accessible formats.

Article 50 Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention shall be equally authentic.
In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

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Acronyms

AIDS	acquired immune deficiency syndrome
CEDAW	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CRC	Committee on the Rights of the Child
ECOSOC	Economic and Social Council of the United Nations
FAO	Food and Agriculture Organization of the United Nations
GAVI	Global Alliance for Vaccines and Immunization
HIV	human immunodeficiency virus
HRC	Human Rights Committee
ILO	International Labour Organization
IMF	International Monetary Fund
INSTRAW	International Research and Training Institute for the Advancement of Women
INTERPOL	International Criminal Police Organization
IOM	International Organization for Migration
IPA	International Association for the Child's Rights to Play
IPEC	International Programme on the Elimination of Child Labour
MDGs	Millennium Development Goals
NGO	non-governmental organization
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNCHS	United Nations Centre for Human Settlements (Habitat)
UNCTAD	United Nations Conference on Trade and Development
UNODC	United Nations Office on Drugs and Crime
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	United Nations Office of the High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
UNITAR	United Nations Institute for Training and Research
UNRISD	United Nations Research Institute for Social Development
WFP	World Food Programme
WHA	World Health Assembly
WHO	World Health Organization
WSC	World Summit for Children
WTO	World Trade Organization

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