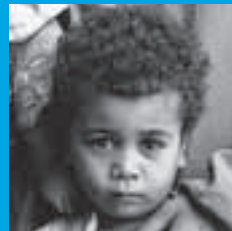
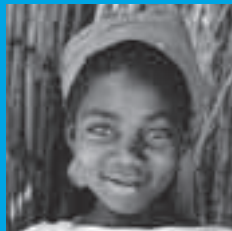
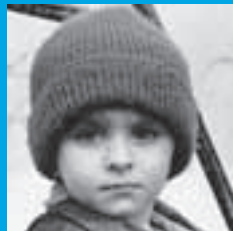


# IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE CHILD



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

**FULLY REVISED THIRD EDITION**



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# Foreword

**T**he 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.



# Preface



**A**

s 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.

**Hoda Badran**

Chairperson  
1991-1995

**Akila Belembaogo**

Chairperson  
1995-1997

**Sandra Mason**

Chairperson  
1997-1999

**Nafsiah Mboi**

Chairperson  
1999-2000

**Awa Ndeye Ouedraogo**

Chairperson  
2000-2001

**Jakob E. Doek**

Chairperson  
2001-2007

**Yanghee Lee**

Chairperson  
2007-





# Acknowledgements

**T**he idea of this *Handbook* was born in conversations with past and present members of the Committee on the Rights of the Child and with Bilg e  g n Bassani, former Deputy Regional Director of UNICEF's Regional Office for Europe in Geneva. We are grateful for the support and assistance we have received during the preparation of successive editions of the *Handbook* from the UNICEF Regional Office for Europe.

The production of this fully revised third edition was realized with the support of: Hans Olsen, Deputy Regional Director and Caroline Bakker, Project Officer at the Geneva Regional Office; Marta Santos Pais, Director, UNICEF's Innocenti Research Centre in Florence and Susan Bissell, Chief, Implementing International Standards Unit at the Centre. The project was made possible thanks to a generous contribution of the Swedish Government.

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.

First and foremost, we gratefully acknowledge the contribution of current and former members of the Committee on the Rights of the Child.

The Office of the High Commissioner for Human Rights, in particular: the successive secretaries of the Committee on the Rights of the Child, Paolo David and – since 2005, Maja Andrijasevic-Boko.

Those from all over the world who were asked to review all or part of various drafts of the first and subsequent editions of the *Handbook*, and who have provided encouragement and comments:


Birgit Arellano, Ulla Armyr, Carlos Arnaldo, Jo Becker, Mark A. Belsey, Christoph Bierwirth, Julie Bissland, Paul Bloem, Neil Boothby, Denis Broun, Giovanna Campello, Nigel Cantwell, Geert Cappelaere, Eva Cl rhall, David Clark, Shalini Dewan, Bruce Dick, Abdel Wahed El Abassi, Carl von Essen, Preeti Ghelano, M lfrid Grude Flekk y, Kimberly Gamble-Payne, Savitri Goonesekere, Christina Gynn  Oguz, Ian Hassall, James R. Himes, Caroline Hunt, Rachel Hurst, Urban Johnsson, June Kane, Gerison Lansdown, Janis Marshall, Kathleen Marshall, Marta Maur s, Sarah McNeill, Dan O'Donnell, Vitit Muntarbhorn, Marjorie Newman-Williams, Yoshie Noguchi, Alfhild Petr n, Rebecca Rios-Kohn, Philippa Russell, H l ne Sackstein, Ben Schonveld, Robert Smith, Rodolfo Stavenhagen, Laura Theytaz-Bergman, Juana Tomas-Rossello, Trond Waage.

We very gratefully acknowledge the meticulous editing of H l ne Martin-Fickel.

*Rachel Hodgkin and Peter Newell  
London, August 2007*

**R**achel Hodgkin and Peter Newell, who were commissioned by UNICEF to prepare the *Implementation Handbook*, are long-term advocates for and commentators on the human rights of children, in the United Kingdom and internationally; both work as consultants for UNICEF. They live in London and have three children.

**Rachel Hodgkin** is a consultant on and advocate for children's rights. Previously she worked for the National Children's Bureau (where she was clerk to the



All-Party Parliamentary Group for Children) and for the Children's Legal Centre, which she helped set up. Her publications include *Effective Government Structures for Children* (with Peter Newell), *Child Impact Statements: an experiment in child-proofing UK Parliamentary Bills* and *Safe to let out? The current and future use of secure accommodation in England*.

**Peter Newell** Coordinator of the Global Initiative to End All Corporal Punishment of Children, launched in 2001, and of the "Children are unbeatable!" Alliance

in the United Kingdom. He chaired the Council of the Children's Rights Alliance for England from 1992 to 2002. He was a member of the NGO Advisory Panel for the United Nations Secretary-General's Study on Violence Against Children and also of the Independent Expert's Editorial Board for the Study, 2004 – 2006. He has written various commentaries on children's rights in the United Kingdom and also a detailed proposal for a children's rights commissioner, published as *Taking Children Seriously*.



# Introduction

## Aims

## and structure

**T**he *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 Dis-

cussions 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

**T**he 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

**A**bbreviated 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](http://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  
8-14, Avenue de la Paix  
1211 Geneva 10, Switzerland

They are also available electronically:  
[www.ohchr.org](http://www.ohchr.org)





# Definition of the child

article

1

## 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.*

**A**rticle 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)



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, exploitation 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](http://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



# Non-discrimination

article

2

## 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.*

**T**he 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](http://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/LBNI/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.



# 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.*

**T**he 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/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?





**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)



# 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.*

**A**rticle 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 implemen-

tation, 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](http://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 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/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](http://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.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, commissioner 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

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](http://www.ohchr.org/english/bodies/crc/comments.htm).)*



## 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.*

**A**rticle 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

article

6



## 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.

**A**rticle 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 devel-

opment 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 fetuses... 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 CRC/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/C/15/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

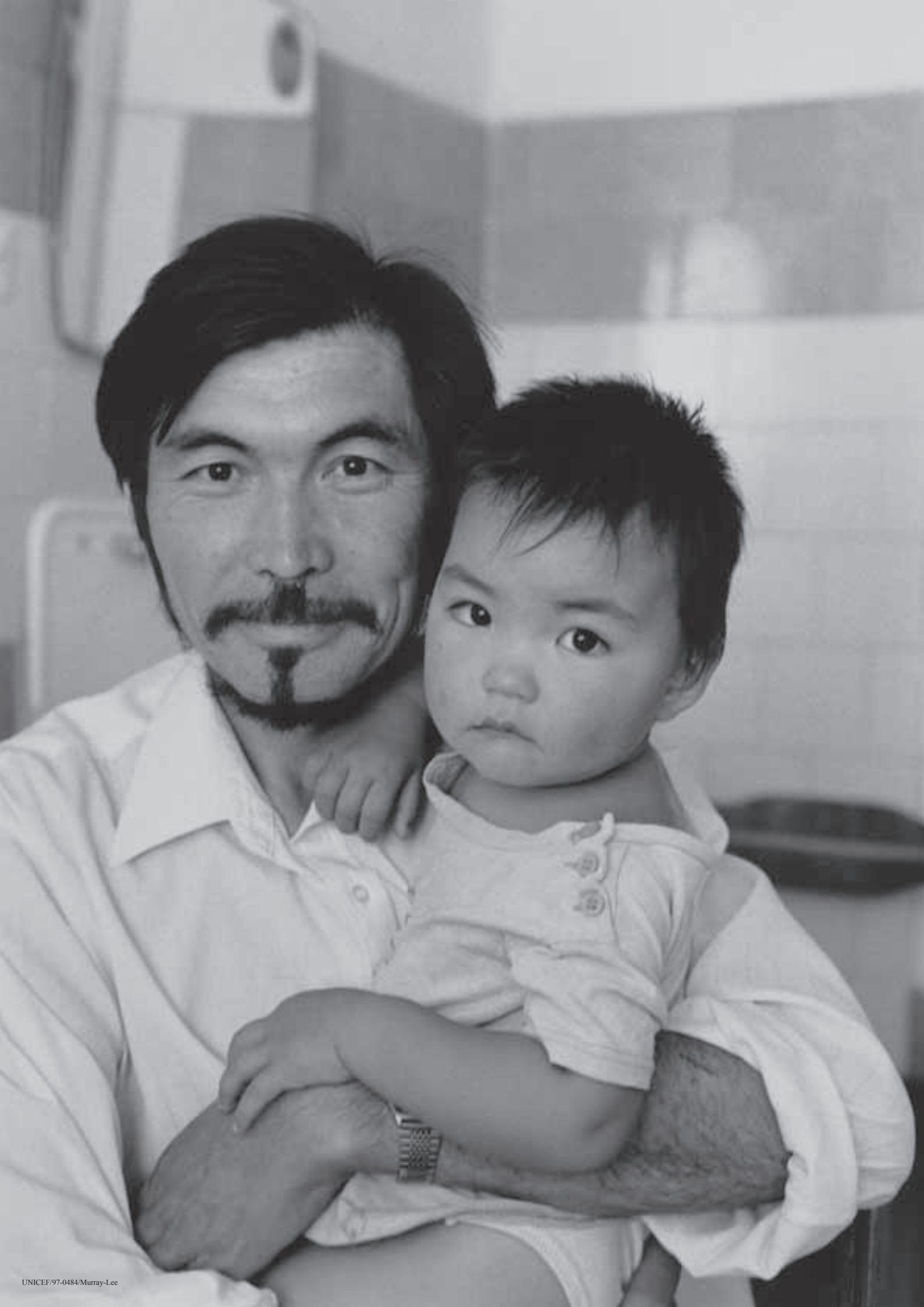
Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

### 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



# Birth registration, name, nationality and right to know and be cared for by parents

article



## 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.*

**A**rticle 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). ■

**Summary**

## 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:\*

	Immuni- zation	Health care	School enrolment	Marriage
Algeria	No	No	Yes	Yes
Argentina	No	No	Yes	Yes <sup>1</sup>
Bangladesh	No	No	No	No
Brazil	No	No	Yes	Yes
China	No	No	Yes <sup>2</sup>	Yes <sup>2</sup>
Colombia	Yes	Yes	Yes	Yes
Congo, DR.	No	No	Yes	No
Egypt	Yes	No	Yes	No
Ethiopia <sup>3</sup>	–	–	–	–
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 <sup>4</sup>	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
<b>TOTAL</b>	<b>10</b>	<b>7</b>	<b>28</b>	<b>14</b>

\* Among countries with 75 per cent of the world's under-18 population.

<sup>1</sup> A birth certificate is required only when the person is under the legal age of marriage: 16 for girls, 18 for boys.

<sup>2</sup> An identification card is required but a residence card may suffice.

<sup>3</sup> No registration system.

<sup>4</sup> 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 its 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 ensure 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/C15/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/C15/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/C15/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?



**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

article

8

## 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.

**A**rticle 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



# Separation from parents

article

9

## 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.*

**A**rticle 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).

Summary



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 arrangements 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 and 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 sentenced 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

article

10

## 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.*

**A**rticle 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.4/1989/48, 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 rec-

ommended 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/C/15/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 been 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



- 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.

**R**atifying 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.



### 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?



**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





# Respect for the views of the child

article

12

## 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.*

**T**he 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 adminis-

trative 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](http://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](http://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.4/2004/19/ 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<sup>7</sup> 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 ombudspersons, 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:

*“... 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 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 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-session country briefings with the Committee (Recommendations, para. 34).



**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).



# 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.*

**T**his 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

article

14

## 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.*

**A**rticle 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



## • 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





# Child's right to freedom of association and peaceful assembly

article

15

## 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.

**T**ogether 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. ■

**Summary**

## 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

article

16

## 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.*

**A**rticle 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)(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 (AI/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. 231)*

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 I. 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?



**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



# 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.*

**A**rticle 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 encour-

aged 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

## Summary

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 discus-

sion, 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.)*



## 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 disfavouredly, 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 storytelling” (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/C/15/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