

Children and drug abuse



Text of Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 33 requires ratifying States to take all appropriate measures to protect children from the illicit use of narcotic or psychotropic substances as defined in the relevant international treaties and to prevent the use of children in the production or trafficking of such drugs. International treaties have identified scores of drugs and substances which require control, within the following broad groupings:

- Opiates (for example opium, heroin, morphine);
- coca leaves products (for example cocaine and ‘crack’ cocaine);
- cannabis products (marijuana);
- Amphetamine-type stimulants (stimulant drugs such as amphetamines, methamphetamines, ecstasy);
- any other psychotropic/psychoactive drug capable of producing a state of dependence

or the abuse of which could lead to social and public health problems warranting international control (sedatives such as barbiturates, hallucinogens such as LSD).

The main international treaties on these drugs are the Single Convention on Narcotic Drugs (1961) as amended by the 1972 Protocol, and the Convention on Psychotropic Substances (1971).

In addition there are drugs used by children that can alter their state of mind, be prejudicial to health or can be addictive, such as alcohol, tobacco and solvents, but that are not controlled by international treaties, though their use by children in many States is “illicit”. The measures to be taken by the State include legislative, administrative, social and educational ones. The emphasis of article 33 is on protection and prevention and it must be read in the context of the whole Convention. ■

Summary

Background

In the post-war decades, children's involvement in illicit drugs was not a significant concern so the issue did not figure in the declarations and conventions of that era. Today, drug abuse by children and young people is causing alarm worldwide because such abuse threatens both the child's development and nations' prosperity and social order.

The issue is now high on most political agendas. In the first decade and a half since the Convention came into force, many States have reported to the Committee that the number of children abusing drugs is rising inexorably.

A Political Declaration was adopted at a General Assembly special session on the world drug problem (1998) which declared the intention of Member States to "give particular attention to demand reduction, notably by investing in and working with youth through formal and informal education, information activities and other preventive measures" (General Assembly, twentieth special session, 10 June 1998, A/RES/S-20/2, para. 6).

The Declaration on the Guiding Principles of Drug Demand Reduction adopted during the same special session calls for systematic action plans and identifies youth as a group in need of special attention, and invites countries to establish networks that facilitate the participation of young people in the design and implementation of youth drug-reduction programmes (General Assembly, twentieth special session, 10 June 1998, A/RES/S-20/3).

The outcome document of the General Assembly's special session on children in 2002 undertook that States would: "Urge the continued development and implementation of programmes for children, including adolescents, especially in schools, to prevent/discourage the use of tobacco and alcohol; detect, counter and prevent trafficking, and the use of narcotic drugs and psychotropic substances except for medical purposes, by, *inter alia*, promoting mass media information campaigns on their harmful effects as well as the risk of addiction and taking necessary actions to deal with the root causes." (Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, para. 11)

Examples of the essential elements for anti-drug programmes for children were provided in a detailed analysis of the phenomenon by the Commission on Narcotic Drugs in a report to the United Nations Economic and Social Council in

2001. This reiterates the recommended strategies of the United Nations Office of Drugs and Crime (previously United Nations Drug Control Programme, UNDCP). (Commission on Narcotic Drugs, *World situation with regard to drug abuse, in particular among children and youth*, E/CN.7/2001/4, 6 December 2000. See box opposite.)

The threat to children

Drug use in the adult population is damaging enough; but when children take drugs they may irreversibly harm their mental or physical growth and States must therefore take all appropriate measures to protect children from their use.

The drugs that children are particularly liable to use are the cheaper ones, so their prevalence depends in part on geography – cannabis (marijuana) appears in most countries, coca paste in South America, opium in Asia, and so forth. In addition, amphetamine-type stimulants such as ecstasy are popular with young people in Europe and North America, and methamphetamines with young people in certain countries in East and South-East Asia (in part because these drugs are not associated with social exclusion or addiction, but rather with the party and dancing scene).

Moreover, children in almost all countries are found to be illicitly obtaining and using alcohol and tobacco and abusing solvents, none of which is covered by international treaties. Alcohol is used in many societies and tobacco in all, even though they can be extremely prejudicial to health and addictive. Solvents are widely perceived as being the drug of childhood. Glue sniffing (the shorthand term for solvent abuse) is particularly noted as a habit of children living and working on the streets – a quick, cheap route to oblivion. Solvent abuse carries an added problem that the sale or possession of solvents, used as an ingredient in a vast range of products, is hard to regulate. The Committee has additionally drawn attention to drugs which are not recognized by the local culture as harmful, such as medicines or mild narcotics, but which should not be given to children.

Sometimes the Committee has drawn attention to drugs which are not recognized by the society as harmful – for example quat consumption in Yemen, alcohol and tobacco in Spain or the use of drugs to control hyperactivity in Finland:

"The Committee recommends that the State Party consider quat as a dangerous substance and take all necessary measures to raise awareness on the risks of its consumption and to prohibit access to it by children." (Yemen CRC/C/15/Add.267, para. 70)



Essential elements to be taken into consideration when designing drug prevention, treatment and rehabilitation programmes for youth

- “(a) Youth are not homogeneous and they are not all equally vulnerable. Strategies should be carefully tailored to clearly defined populations and programmes need to target particular youth cultures and youth settings.
- (b) Programmes should be based on evidence of what works and does not work in specific settings and/or with specific target groups. They should in turn include a strong monitoring and evaluation component to contribute to the body of evidence.
- (c) Prevention programmes should include a range of activities addressing a range of risk and protective factors. These could include the provision of scientifically based, non-exaggerated information about drugs, their effects and the real prevalence of use among peers; personal and social skills; a caring and health-promoting family environment; fun, challenging and constructive recreational activities; an adequate level of education and employment; and, youth-friendly health and social services.
- (c) The early identification of drug abuse and early intervention is essential to prevent youth to progress from occasional to dependent or more harmful forms of drug abuse.
- (d) Treatment and rehabilitation services for children and young people should pay particular attention to assessing the specific child situation and needs, involving and supporting families in the therapeutic process, using individual and group-based interventions, the provision of educational, vocational training and employment opportunities, and the connection to pro-social mentors and peers.
- (e) Young people are a key resource for making a difference in drug abuse and they should be given the chance to express their views, which in turn should be taken seriously. Youth should be involved in all stages of the development of prevention programmes. Also, there is strong indication that involving young people as prevention agents in peer-led initiatives can have good results.
- (f) Programmes should not focus on one drug only, but it should address, within the wider concept of health promotion, substance abuse in general, including that of tobacco, alcohol and inhalants.
- (g) Programmes should be developed and implemented through collaborative efforts involving all sectors in the community, including both governmental and non-governmental. At a wider level, networks of experts and practitioners need to be established and maintained to ensure cross fertilization and continuous improvements.
- (h) Substance abuse behaviours usually change very slowly. Thus prevention programmes need to be sustained over a long period of time to be effective.”

(United Nations Office of Drugs and Crime, January 2007)



“The Committee notes with concern ... the fact that consumption of alcohol and tobacco is socially accepted and not perceived as a risk.”
(Spain CRC/C/15/Add.185, para. 38)

“The Committee is also concerned at the information that Attention Deficit Hyperactivity Disorder (ADHD) and Attention Deficit Disorder (ADD) are being misdiagnosed and that psycho-stimulant drugs are therefore being overprescribed, despite the growing evidence of the harmful effects of these drugs. “The Committee recommends that further

research be undertaken on the diagnosis and treatment of ADHD and ADD, including the possible negative effects of psycho stimulants on the physical and psychological well-being of children, and that other forms of management and treatment be used as much as possible to address these behavioural disorders.” *(Finland CRC/C/15/Add.272, paras. 38 and 39)*

Illicit drug use is also associated with criminality. Children who take drugs may often play a minor role in their production and traffic, and they may

involve themselves in other crimes and forms of exploitation.

At its 87th session in 1999, the General Conference of the International Labour Organization adopted the Worst Forms of Child Labour Convention (No.182). For the purposes of this Convention, the term “worst forms of child labour” includes:

“... (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties...” (see Appendix 4, page 759.)

The Committee has expressed deep concern to States where children are employed in the drugs trade, such as Colombia:

“The Committee is... seriously concerned over the manufacture in, and exportation of drugs from, Colombia which affects children who are pickers of coca leaves (raspachines), as well as children forced or lured into trafficking drugs, including within their bodies (mulas).” (Colombia CRC/C/COL/CO/3, para. 88)

Or where children are drawn into criminal activities in order to feed their drug habits:

“While acknowledging the efforts made by the State Party to combat drug abuse, trafficking and drug-related violence, the Committee remains concerned at the high incidence of substance abuse by children in Nigeria, including the use of cannabis, psychotropic substances, heroin, cocaine and volatile organic solvents, as well as abuse of local plants. The Committee is also concerned by the reports of the increasing involvement of young people in drug-related crimes.” (Nigeria CRC/C/15/Add.257, para. 67)

The obligation under article 33 to “protect children from the illicit use of drugs...” also includes protecting children from the effects of drug abuse by adults. Pregnant women dependent on drugs may, for example, have babies with consequent physical or intellectual disabilities or have newborns experiencing abstinence syndromes. Drug abuse by parents or other family members may also result in children being neglected or harmed. The Committee’s General Comment No. 7 on “Implementing child rights in early childhood”, documents this aspect of drug abuse:

“While very young children are only rarely likely to be substance abusers, they may require specialist health care if born to alcohol- or drug-addicted mothers, and protection where family members are abusers and they are at risk of exposure to drugs. They may also suffer adverse consequences of alcohol or drug abuse on family living standards and quality of

care, as well as being at risk of early initiation into substance abuse...” (Committee on the Rights of the Child, General Comment No 7, 2005, CRC/C/GC/7/Rev.1, para. 36)

And the Committee has raised the matter with some States, for example Norway:

“The Committee notes with concern the high number of children who consume drugs and alcohol in the State Party. The Committee is also concerned about the large number of children who suffer as a result of their parents’ drug abuse...” (Norway CRC/C/15/Add.263, para. 43)

The Committee has urged many countries to take systematic action to protect children from drugs, including developing action plans in cooperation with the United Nations Office of Drugs and Crime (UNODC) (previously the United Nations Drug Control Programme, UNDCP) and other international organizations, for example to Armenia:

“The Committee recommends that the State Party develop a national drug control plan, or a Master Plan, with the guidance of the United Nations Drug Control Programme (UNDCP)... The Committee recommends cooperation with and assistance from WHO and UNICEF.” (Armenia CRC/C/15/Add.225, para. 63)

Understanding drug abuse

The problem of drug abuse by children is peculiarly alarming to the adult world because we cannot accurately map it and we do not know how best to tackle it: simply making its production and sale illegal is clearly not enough.

Nothing can be done about the problem without understanding it, and clearly drug abuse by children merits a high priority for research, both to describe the problem and to identify effective remedies. These include the identification of protective and risk factors and the evaluation of positive interventions. There will be differences between strategies aimed at children from communities where drugs are a significant part of the economy and those from communities where drug consumption is the problem; but in both the perceptions of the young people themselves are vital. States are asked to report on drug abuse prevention, treatment and rehabilitation activities to UNODC, and the Committee strongly encourages States to review and analyse the phenomenon.

UNODC comments: “Quantitative data on drug abuse among young people are available in many countries, although not easily comparable due to the use of different methodologies, age breakdowns etc. What is really missing,



however, is systematic qualitative information about how young people perceive drugs and why they use drugs. Such information is indispensable for the understanding of the root causes of the high prevalence of drug use and the design of effective prevention programmes. In collecting information the UNDCP is making sure that young people themselves participate in the process of collection, analysis and discussion of the information.” (Review of the Achievements of the Plan of Action of the World Summit for Children and Consideration of Future Action, UNDCP, 2001, A/AC.256/CRP.8, para. 1) The Committee has reflected this advice in its recommendations, for example:

“The Committee recommends... that the State Party:

(a) formulate a rights-based plan of action for the protection of all children and particularly adolescents from the dangers of drugs and harmful substances, and involve children in its formulation and implementation;

(b) provide children with accurate and objective information about the harmful consequences of substance abuse...” (Kiribati CRC/C/KIR/CO/1, para. 48)

“Legislative and administrative” measures against drugs

The ILO has identified involvement in drugs as one of the worst forms of child labour (see above). Most forms of drug production or trafficking are usually already illegal, but countries can increase sentences on convicted adults if they involve children in these activities. Similarly, criminal codes could ensure that the selling or distribution of drugs to children is treated as a more serious offence. Not only are children more vulnerable than adults, there is evidence that dealers deliberately target them, for example by giving them free samples, as the Committee noted in Albania:

“The Committee is concerned at the increase in drug abuse, in particular among young children, including through the free distribution of drugs by drug dealers with the aim of luring children into drug use, which may occur also in school environments.” (Albania CRC/C/15/Add.249, para. 74)

Legal measures are also needed to deter the access by children to solvents – for example by attaching criminal penalties to the sale of solvents to children without authorization by parents or others.

Tobacco and alcohol use by children can also be reduced by legislative measures, such as bans on the sale of alcohol or cigarettes to children, or by regulating how they are marketed, for example by

prohibiting alcoholic drinks targeted at a teenage market or the advertising of tobacco or alcohol in general.

In its General Comment No. 4 on “Adolescent health and development in the context of the Convention on the Rights of the Child”, the Committee recommends that States regulate the marketing of unhealthy products to children:

“The Committee is concerned about the influence exerted on adolescent health behaviours by the marketing of unhealthy products and lifestyles. In line with article 17 of the Convention, States Parties are urged to protect adolescents from information that is harmful to their health and development, while underscoring their right to information and material from diverse national and international sources. States Parties are therefore urged to regulate or prohibit information on and marketing of substances such as alcohol and tobacco, particularly when it targets children and adolescents.” (Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, para. 25)

The Committee often recommends legal reform to reporting States. For example, it told Nepal:

“The Committee expresses concern at the widespread prevalence of alcohol consumption by children, as well as the growing incidence of substance abuse by children, including the use of cannabis, heroin, opiates and intravenous drug use. The Committee is also concerned about the harmful effects of alcohol and substance consumption by parents on the physical, emotional and psychological development and well-being of children in the State Party. While noting that the Alcohol Act prohibits the selling of alcohol to children aged 16 years or below, the Committee expresses concern that the Act carries no penalty in case of violation, and that legislation prohibiting the use of alcohol by minors is generally ineffectively implemented. It is also concerned at the absence of specific legislation prohibiting sale, use and trafficking of controlled substances by children, and also of treatment programmes in this regard.

“The Committee recommends that the State Party take initiatives to combat drug and alcohol abuse by children, including through public education awareness campaigns and ensure that children who abuse alcohol and/or use drugs and other harmful substances have access to effective structures and procedures for treatment, counselling, recovery and reintegration. The Committee further recommends that parents are educated, through, inter alia, awareness-raising campaigns, on the harmful effects of parents’ use of alcohol and controlled substances on the development and well-being





of children. The Committee urges the State Party to adopt the necessary legislation to prohibit sale, use and trafficking of controlled substances by children, and to ensure effective implementation of all legislation prohibiting alcohol and substance use by children. (Nepal CRC/C/15/Add.261, paras. 83 and 84)

As well as prohibiting their production, States can also take measures to combat economic dependence on drugs, for example by encouraging farmers to cultivate crops other than drug crops by special subsidies or tax exemptions (see, for example, Viet Nam CRC/C/3/Add.21, para. 252).

Constructive measures. The criminal aspects of the issue should not obscure the fact that those involved are children, often very vulnerable children, who have little opportunity in life. UNODC points out that certain groups of children are particularly at risk, such as children working or living on the streets, refugees, victims of disasters and those from marginalized countries.

The Committee has also noted the particular need for drug prevention, treatment and rehabilitation in relation to socially excluded groups, such as those in refugee camps (for example, in Sierra Leone) and in slums or children who drop out of school (for example, in Djibouti).

It should therefore be noted that article 33 is concerned with the “protection” of children from drug abuse. Placing harsh custodial penalties on children for drug use is an ineffective form of protection. Custody may (but does not necessarily) remove children from exposure to drugs, but cannot teach them how to cope with this exposure once back on the streets; moreover prisons or detention centres may expose these children to more serious forms of drug abuse or serve to introduce them to the drug underworld. It is more constructive to give legal powers to intervene in cases of child drug abuse to the welfare authorities rather than to criminal justice agencies.

The Committee has consistently opposed the criminalization of children who use drugs, for example welcoming the fact that in Thailand:

“... adolescent drug use is now treated as a medical rather than criminal matter” (Thailand CRC/C/THA/CO/2, para. 53)

and has expressed concern about countries that fail in this respect, such as Armenia:

“The Committee ... notes with concern that child drug abusers are considered as criminals under article 231 of the Criminal Code and not as children in need of care and protection.” (Armenia CRC/C/15/Add.225, para. 62)

It is also worried by non-criminal responses which are, nonetheless, stigmatizing or involve depriving children of their liberty or other civil rights, such as placing children in closed rehabilitative units or mental health wards:

“The Committee notes the State Party’s non-punitive approach to victims of drug abuse, but is concerned that children abusing drugs may be placed in a closed institution for a period of up to three years.

“The Committee recommends that the State Party develop non-institutional forms of treatment of children who abuse drugs and make the placement of children in an institution a measure of last resort. In addition, the Committee recommends that children living in such institutions be provided with basic services such as health, education and other social services and maintain contact with their family during their stay. Finally, the Committee recommends that the State Party set clear standards for existing institutions and ensure periodic review of the placement of children, in the light of article 25 of the Convention.” (Brunei Darussalam CRC/C/15/Add.219, paras. 53 and 54)

“The Committee is concerned that... the illicit use of drugs and substances by children is increasing, including the use of crack cocaine and marijuana, as well as other substances, and that some of the children abusing drugs and using substances are placed, for this reason, in mental health institutions...”

“The Committee recommends that the State Party... ensure that child drug and substance abusers are not placed in mental institutions unnecessarily and have access to effective structures and procedures for treatment, counselling, recovery and reintegration.” (Saint Vincent and the Grenadines CRC/C/15/Add.184, paras. 50 and 51)

“Social and educational” measures

UNODC comments that no single approach or strategy has been proved to be consistently effective in reducing or preventing drug abuse, but the box on page 505 describes those elements which have been shown to be necessary in prevention programmes for youth.

Not all children have drugs education in their school curricula, and where it is, it may often be ineffective or even counter-productive (containing dangerous misinformation or inadvertently glamorizing drug-taking). Some countries have given drugs education a high priority, but most importantly anti-drug strategies should take account of the views of children themselves and should be objective.

The media have a clear part to play. The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) states: “The mass media should be aware of its extensive social role and responsibility, as well as its influence, in communications relating to youthful drug and alcohol abuse. It should use its power for drug abuse prevention by relaying consistent messages through a balanced approach. Effective drug awareness campaigns at all levels should be promoted.” (Para. 44)

Health and social services also need to be aware of drug abuse by children. In a number of countries, the paediatric systems are not competent to identify and handle drug abuse by children; adult treatment centres do not accept children and centres for children may be scarce or costly:

“While noting the provision of the Juvenile Justice Law allowing the rehabilitation of convicted children and/or adolescents suffering from drug addiction as an alternative to imprisonment, the Committee is concerned at the scarcity of treatment centres for drug addiction which also limits the possibility of placing children in conflict with the law.” (Costa Rica CRC/C/15/Add.266, para. 53)

“While noting... the increased number of treatment and social reintegration services for children, the Committee ... is concerned about the fact that children, who voluntarily seek treatment in drug recovery and reintegration centres, are often asked to pay for treatment causing insurmountable obstacles to children of limited means and denying their access to treatment and reintegration.” (Philippines CRC/C/15/Add.259, para. 81)

Services specifically tailored for children and young people are urgently needed in many countries:

“The Committee recommends that the State Party continue to strengthen its efforts to... provide children and adolescents with accurate and objective information about drug and substance use, including hard drugs, glue and solvent sniffing, through public school programmes and media campaigns and protect children from harmful misinformation and models; ... develop free and easily accessible drug abuse treatment and social reintegration services for children who are victims of drug and substance abuse; ... tailor specific drug abuse, including glue and solvent sniffing, recovery and social reintegration programmes and centres for street children and cooperate with non governmental organizations in this

respect; ... allocate adequate budgetary funds to existing drug recovery and reintegration centres; [and] seek technical assistance from, among others, the United Nations Office on Drugs and Crime and WHO.” (Philippines CRC/C/15/Add.259, para. 82)

The Committee has also noted the particular needs of children affected by HIV/AIDS in respect of drugs:

“The use of substances, including alcohol and drugs, may reduce the ability of children to exert control over their sexual conduct and, as a result, may increase their vulnerability to HIV infection. Injecting practices using unsterilized instruments further increase the risk of HIV transmission. The Committee notes that greater understanding of substance use behaviours among children is needed, including the impact that neglect and violation of the rights of the child has on these behaviours. In most countries, children have not benefited from pragmatic HIV prevention programmes related to substance use, which even when they do exist have largely targeted adults. The Committee wishes to emphasize that policies and programmes aimed at reducing substance use and HIV transmission must recognize the particular sensitivities and lifestyles of children, including adolescents, in the context of HIV/AIDS prevention. Consistent with the rights of children under articles 33 and 24 of the Convention, States Parties are obligated to ensure the implementation of programmes which aim to reduce the factors that expose children to the use of substances, as well as those that provide treatment and support to children who are abusing substances.” (Committee on the Rights of the Child, General Comment No. 3 on “HIV/AIDS and the rights of the child”, 2003, CRC/GC/2003/3, para. 39)

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty requires that detention facilities “should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society” and “should adopt specialized drug prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles”. (Rules 53 and 54)



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 33, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 33 is relevant to the **departments of justice, home affairs, social welfare, education, health, media and public relations**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 33 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 33 likely to include the training of **community and street workers, youth workers, social workers, teachers, police, judiciary, medical and psychological professionals and parent education**)?

• Specific issues in implementing article 33

Has the State ratified:

- the 1961 Single Convention on Narcotic Drugs with its 1972 amending Protocol?
- the 1971 Convention on Psychotropic Drugs?
- Do laws clearly prohibit the use of illicit narcotic drugs and psychotropic substances?
- Do laws clearly prohibit the production and trafficking of these drugs and substances?
- Do laws attach any additional penalties for drug offences committed by adults where children have been sold or given these drugs and substances or where children have been used for their production or trafficking?
- Do laws prevent the sale of solvents to children without appropriate authorization from parents or other adults?
- Do laws set a minimum age for the purchase of alcohol and tobacco?
- Have any surveys been undertaken to assess the scale of drug abuse among children?



How to use the checklist, see page XIX

Has research been undertaken in relation to drug abuse and children to

- identify risk factors?
- identify prevention strategies?
- identify rehabilitation strategies?

Is drug education and education about alcohol and tobacco a part of

- primary education curricula?
- secondary education curricula?
- youth and community work?
- parenting education?
- Are treatment and rehabilitation services, specifically tailored for children who abuse drugs, available in the health or social welfare sectors?
- Are rehabilitation interventions, based on the best interests of the children concerned, available to parents and other family members who abuse drugs?
- Are interventions for children and parents evaluated?
- Are the views of children taken into account when anti-drug policies and strategies are devised and implemented?
- Do legal interventions aim at treating and rehabilitating rather than punishing children who become involved in drugs?
- Do professionals and judiciary in the juvenile justice system coordinate with professionals in the health, education and social work sectors in responding to drug offences by children?
- Are measures taken to protect young people in closed or locked institutions from exposure to drugs?
- Are there public campaigns to discourage the use of drugs by the young?
- Are such campaigns evaluated?
- Are parents and guardians supported as necessary, including offering education on with the skills to provide physically and emotionally for their children?

Reminder: The Convention is indivisible and its articles interdependent.
Article 33 should not be considered in isolation.

Particular regard should be paid to: The other general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground

Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children

Article 6: right to life and maximum possible survival and development

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

How to use the checklist, *see page XIX*



Closely related articles

Articles whose implementation is particularly related to that of article 33 include:

Article 17: mass media, dissemination of information

Article 19: protection from all forms of maltreatment by parents and other carers

Article 24: health and health services

Article 29: education to prepare children for responsible life in a free society

Article 32: protection from hazardous or exploitative work

Article 37: protection for children deprived of liberty

Article 39: rehabilitative care

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Sexual exploitation of children

article

34

Text of Article 34

1. States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 34 obliges States to protect children from “all forms of sexual exploitation and sexual abuse” and to take measures against the three particular (and often linked) forms of exploitation – sexual abuse, prostitution and use in pornography – set out in paragraphs (a), (b) and (c). Article 19 more generally covers protection from “all forms of physical or mental violence” and specifically mentions sexual abuse (see page 249). The exploitative use of children in prostitution and pornography is linked to the sale of and traffic in children (see article 35, page 531).

While sexual exploitation of children has only received international attention relatively recently, it has been highlighted extensively within the United Nations system during the 1990s, with the appointment of a Special Rapporteur on the sale

of children, child prostitution and child pornography, the adoption of Programmes of Action by the Commission on Human Rights, and the First and Second World Congresses against Commercial Sexual Exploitation of Children, held in 1996 and 2001. Also in 2001 the General Assembly, on the recommendation of the Committee on the Rights of the Child, requested the Secretary-General to conduct a study on violence, including sexual violence, against children. In February 2003 Professor Sérgio Paulo Pinheiro was appointed to lead this study, which reported in 2006.

In 2000 the United Nations General Assembly adopted the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (for full commentary, see page 669). ■

Summary

Background to adoption of the Optional Protocol

In 1994, the Committee on the Rights of the Child noted the decision of the Commission on Human Rights to establish an open-ended working group to prepare guidelines for a possible draft optional protocol to the Convention on the sale of children, child prostitution and child pornography, as well as basic measures needed for their prevention and eradication. The Committee adopted a formal statement on “Cooperation with United Nations bodies – Sale of children, child prostitution and child pornography”, in which it stressed the important framework established by the Convention to deal with such situations, and *“... that the child affected by situations of sale, prostitution and pornography should be considered mainly as a victim and that all measures adopted should ensure full respect for his or her human dignity, as well as special protection and support within the family and society.”* (Committee on the Rights of the Child, Report on the sixth session, April 1994, CRC/C/29, p. 4. See also Report on the tenth session, October/November 1995, CRC/C/46, paras. 220 and 226.)

In a 1996 statement to the working group, the Committee pointed out that the Convention not only provides specific provisions on sexual exploitation, but that it has also

“... set up a holistic approach for the consideration of the human rights of children. In the light of such an approach, all rights are recognized as inherent to the human dignity of the child, and the implementation of one right will only be effective when taking into consideration the implementation of, and respect for, all the other rights of the child. In a word, the Convention reaffirms the indivisibility and interdependence of human rights.

“The protection of the child from all forms of exploitation, including from sale, prostitution or pornography, should therefore not be seen simply in isolation but in the broader context of the realization of children’s rights and taking in due consideration the international obligations arising from the Convention.” (Committee on the Rights of the Child, Report on the eleventh session, January 1996, CRC/C/50, p. 45)

The Committee also noted that other important legal instruments had been adopted relevant to the protection of the child against exploitation, mentioning the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, and the ILO Forced Labour Convention, 1930 (No.29),

“... which are in reality used by the Committee on the Rights of the Child within the framework of its monitoring functions.” (CRC/C/50, p. 46)

At its twentieth session (January 1999) the Committee made a statement to the fifth session of the open-ended working group on the draft optional protocol, urging reconsideration of the best way of proceeding:

“... it seems to the Committee that it might be helpful for the working group to take stock of recent developments and to reassess its approach in the light of these changing circumstances, with a view to providing a very valuable opportunity for the international community to ensure that the overall approach which is emerging is optimal. There are a lot of calls for coherence and coordination but it is difficult to achieve these objectives when many initiatives are developing simultaneously; it is essential to avoid duplication and overlapping initiatives, as well as the risk of inconsistency and incompatibility... It is, indeed, the belief of the Committee that the holistic approach to the rights of the child enshrined in the Convention requires a careful effort, and closer collaboration among all the relevant actors, to ensure the harmonization of outcomes.” (Committee on the Rights of the Child, Report on the twentieth session, January 1999, CRC/C/84, para. 217)

Despite the Committee’s emphasis (and that of various concerned non-governmental organizations) that it would be more productive to strengthen existing instruments, the open-ended working group continued to meet and develop successive drafts of the optional protocol. On 25 May 2000 the General Assembly adopted the Optional Protocol. By July 2007, it had been ratified or acceded to by over one hundred States (see page 671).

Other international instruments and standards

The Universal Declaration of Human Rights (article 4) requires generally that: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” This is repeated in article 8 of the International Covenant on Civil and Political Rights, which also covers “forced and compulsory labour” (see article 32, page 486). The Human Rights Committee, in a General Comment on article 24 of the International Covenant (which recognizes children’s right to protection), notes the need to protect children “from being exploited by means of forced labour or prostitution” (Human Rights Committee, General Comment No. 17, 1989, HRI/GEN/1/Rev.8, para. 3, p. 184).



The 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others targets procurers and exploiters of prostitutes (General Assembly resolution 317(IV), 2 December 1949, annex); the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery requires States to “take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of...any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour” (article 1). The 1979 Convention on the Elimination of All Forms of Discrimination against Women requires States Parties in article 6 to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”.

The Committee on the Elimination of Discrimination against Women issued a General Recommendation in 1991 on violence against women which notes in commenting on article 6 that: “Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.” (Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, 1991, HRI/GEN/1/Rev.8, para. 15, p. 304)

The ILO Worst Forms of Child Labour Convention, 1999 (No.182) includes in its definition of the worst forms of child labour, “the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances” (see article 32, page 479 and full text in Appendix 4, page 759).

In 2000 the United Nations Convention against Transnational Organized Crime was adopted, together with its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (children are defined as under-18-year-olds). The purposes of the Protocol are “to prevent and combat trafficking in persons, paying particular attention to women and children” (children are defined as in the Convention on the Rights of the Child) and to “protect and assist the victims of such trafficking, with full respect for their human rights”, promoting cooperation

among States Parties to meet these objectives (article 2). “Trafficking in persons” is defined to mean “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”. “Exploitation” includes “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (article 3). The Protocol covers offences which are transnational in nature and involve “an organized criminal group”. It requires States Parties to “establish comprehensive policies, programmes and other measures” to prevent and combat trafficking in persons and to protect victims (article 9). (For full text of Protocol, see Appendix 4, page 761.)

Other international initiatives

Following the adoption of the Convention on the Rights of the Child in 1989, increasing attention has been paid, through various United Nations bodies and other international initiatives, to the sexual exploitation of children.

Human Rights Council’s Special Rapporteurs and recommendations for action

In 1990, the Commission on Human Rights appointed a Special Rapporteur on the sale of children, child prostitution and child pornography, who prepares annual reports for the Human Rights Council, carries out field visits and prepares country-specific reports, communicates with Governments where there are allegations of violations of children’s rights and promotes international cooperation. (For further discussion of sale of and trafficking in children, see article 35, page 531, and Optional Protocol, page 669.) The successive reports of the Rapporteurs provide detailed discussion of conditions in countries that they have visited, thematic studies and recommendations for action. (These reports are available at www.ohchr.org/english/issues/children/rapporteur/annual.htm.)

Two other Special Rapporteurs – on violence against women (appointed by Commission on Human Rights resolution 1994/45) and on situations of systematic rape, sexual slavery, and slavery-like practices during periods of armed conflict (appointed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities) – have presented reports and





recommendations relevant to the protection of children from sexual exploitation.

World congresses against commercial sexual exploitation of children

The First World Congress against Commercial Sexual Exploitation of Children, held in Stockholm (Sweden) in August 1996, included government representatives from 122 countries together with United Nations agencies and NGOs. They committed themselves to a “global partnership against the commercial sexual exploitation of children” and produced a detailed Declaration and Agenda for Action rooted in the Convention: “The commercial sexual exploitation of children is a fundamental violation of children’s rights. It comprises sexual abuse by the adult and remuneration in cash or kind to the child or to a third person or persons. The child is treated as a sexual object and as a commercial object. The commercial sexual exploitation of children constitutes a form of coercion and violence against children, and amounts to forced labour and a contemporary form of slavery.” (Declaration, A/51/385, para. 5)

The Agenda for Action identified the Committee on the Rights of the Child as a catalyst, with a key role in eliminating commercial sexual exploitation. It provided detailed recommendations for legislative, social and educational measures. It urged States to prepare national agendas for action and indicators of progress, with set goals and a time frame for implementation by the year 2000 (see box opposite). A Second World Congress was held in Yokohama, Japan, in December 2001 and adopted a Global Commitment reaffirming these goals (see box, page 526).

United Nations General Assembly’s special session on children

The outcome report of the United Nations General Assembly’s special session on children in 2002 called on States to:

“... Take concerted national and international actions as a matter of urgency to end the sale of children and their organs, sexual exploitation and abuse, including the use of children for pornography, prostitution and paedophilia, and to combat existing markets.

“Raise awareness of the illegality and harmful consequences of sexual exploitation and abuse, including through the Internet, and the trafficking of children.

“Enlist the support of the private sector, including the tourism industry and the media, for a campaign against sexual exploitation and trafficking of children.

“Identify and address the underlying causes and the root factors, including external factors, leading to sexual exploitation and trafficking of children and implement preventive strategies against sexual exploitation and trafficking of children.

“Ensure the safety, protection, and security of victims of trafficking and sexual exploitation and provide assistance and services to facilitate their recovery and social reintegration.

“Take necessary action, at all levels, as appropriate, to criminalize and penalize effectively, in conformity with all relevant and applicable international instruments, all forms of sexual exploitation and sexual abuse of children, including within the family or for commercial purposes, child prostitution, paedophilia, child pornography, child sex tourism, trafficking, the sale of children and their organs and engagement in forced child labour and any other form of exploitation, while ensuring that, in the treatment by the criminal justice system of children who are victims, the best interests of the child shall be a primary consideration.

“Monitor and share information regionally and internationally on the crossborder trafficking of children; strengthen the capacity of border and law enforcement officials to stop trafficking and provide or strengthen training for them to respect the dignity, human rights and fundamental freedoms of all those, particularly, women and children who are victims of trafficking.

“Take necessary measures, including through enhanced cooperation between governments, intergovernmental organizations, the private sector and nongovernmental organizations to combat the criminal use of information technologies, including the Internet, for purposes of the sale of children, for child prostitution, child pornography, child sex tourism, paedophilia and other forms of violence and abuse against children and adolescents.” (United Nations, Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, paras. 40 to 47)

United Nations Secretary-General’s Study on Violence Against Children

In 2001 the United Nations General Assembly requested that the Secretary-General conduct a comprehensive global study on violence against children. This study reported in 2006; a more detailed complementary *World Report on Violence against Children* was also published (for summary of the study and overarching recommendations, see article 19, page 251). Sexual exploitation was, naturally, a focus of this study. The *World Report* noted:

Stockholm World Congress Declaration

The First World Congress against Commercial Sexual Exploitation of Children (Stockholm, Sweden, 1996) in its Declaration calls on States, in cooperation with national and international organizations and civil society, to:

- accord high priority to action against the commercial sexual exploitation of children and allocate adequate resources for this purpose;
- promote stronger cooperation between States and all sectors of society to prevent children from entering the sex trade and to strengthen the role of families in protecting children against commercial sexual exploitation;
- criminalize the commercial sexual exploitation of children, as well as other forms of sexual exploitation of children, and condemn and penalize all those offenders involved, whether local or foreign, while ensuring that the child victims of this practice are not penalized;
- review and revise, where appropriate, laws, policies, programmes and practices to eliminate the commercial sexual exploitation of children;
- enforce laws, policies and programmes to protect children from commercial sexual exploitation and strengthen communication and cooperation between law enforcement authorities;
- promote adoption, implementation and dissemination of laws, policies, and programmes supported by relevant regional, national and local mechanisms against the commercial sexual exploitation of children;
- develop and implement comprehensive gender-sensitive plans and programmes to prevent the commercial sexual exploitation of children, to protect and assist the child victims and to facilitate their recovery and reintegration into society;
- create a climate through education, social mobilization, and development activities to ensure that parents and others legally responsible for children are able to fulfil their rights, duties and responsibilities to protect children from commercial sexual exploitation;
- mobilize political and other partners, national and international communities, including intergovernmental organizations and non-governmental organizations, to assist countries in eliminating the commercial sexual exploitation of children; and
- enhance the role of popular participation, including that of children, in preventing and eliminating the commercial sexual exploitation of children. (A/51/385, pp. 3 and 4)

The Agenda for Action provides detailed proposals under the headings: “Coordination and cooperation; Prevention; Protection; Recovery and Reintegration; and Child participation.” A Second World Congress was held in Yokohama, Japan, in December 2001 (see page 526).



“Although statistics relating to the number of children used in prostitution are broad estimates and all statistics concerning prostitution should be treated with caution, around one million children are thought to enter prostitution every year. A 13-country study by Save the Children suggests that child sexual exploitation is increasing, with evidence of growing criminal activities relating to trafficking of children for sexual purposes, exploitation by tourists and travelers, and pornography and Internet-related crimes...

“A range of predisposing factors for child sexual exploitation have been identified: violence in the

home and family, including sexual abuse from husbands of young married girls, who will not be accepted back by their parents, or expulsion from the school or workplace. The ways children enter prostitution are therefore intrinsically abusive, and include abandonment and extreme social stigma. Some children are born into the trade in brothel communities, or given to priests in ritual forms of sexual slavery... Disability can also be a risk factor...

“There is also widespread evidence from every region that many girls and boys sell sex on the street simply as a survival strategy in exchange

for food, shelter or drugs.” (Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006, pp. 246 and 247)

The Study recommended prohibition of all forms of violence against children, including all sexual violence, setting a target date of 2009.

The Committee’s examination of States Parties’ reports

The Committee has paid consistent attention to the issue of sexual exploitation during its examination of reports from States Parties. Where the Committee considers that the State has not taken sufficient action it routinely recommends a series of measures, as in its Concluding Observations to Benin:

“The Committee urges the State Party to:

- (a) Conduct a comprehensive study to assess the causes, nature and extent of sexual exploitation and abuse of children;*
- (b) Adopt a plan of action to prevent and combat sexual exploitation and sexual abuse;*
- (c) Ensure that children’s testimonies are recorded in an appropriate way and that the persons carrying out the hearing have the necessary specialist qualifications;*
- (d) Make the prevention of sexual abuse and exploitation a compulsory subject in all relevant training programmes;*
- (e) Take measures to ensure that teachers and children be made fully aware of the gravity of sexual abuse and violence and that the inter-ministerial order penalizing sexual violence is rigorously applied as well as the due process of law;*
- (f) Ensure that perpetrators of sexual abuse and exploitation are brought to justice;*
- (g) Provide sustained information and education on the Persons and Family Code together with actions to improve knowledge and operational capacity of actors in the judicial system and review and amend as appropriate the existing legislation to establish a minimum age for sexual consent; and*
- (h) Strengthen its efforts, including adequate human and financial resources, to provide care, full physical and psychological recovery and social reintegration for child victims of sexual exploitation and sexual abuse and consider establishing a centre for recovery and social reintegration of the child victims.”* (Benin CRC/C/BEN/CO/2, para. 70)

Other measures for tackling sexual exploitation of children appear in the Committee’s Concluding Observations to Costa Rica and the Yemen, recommending:

“... the State Party should promote and develop universal policies that directly address the social, economic and ideological

factors which render the under-18 population so vulnerable to sexual exploitation and foster the conditions for commission of this crime; promote and develop intersectoral programmes and institutions aimed at early prevention and at assisting young girls and adolescents at risk of sexual exploitation, or who are already its victims; promote and develop programmes of comprehensive assistance to victims; ... [and secure] ... the allocation of a larger budget dedicated specifically to battling sexual exploitation. In developing these programmes, the Committee recommends the participation on a voluntary basis of adolescents who were themselves victims of commercial sexual exploitation. The Committee further recommends that the State Party seek the technical cooperation of UNICEF in this respect.” (Costa Rica CRC/C/15/Add.266, para. 50)

and

“The Committee recommends that the State Party...

- (a) Undertake a study on the prevalence of sexual abuse and exploitation;*
- (b) Take all necessary measures to prevent and end this practice through a comprehensive strategy, notably by holding debates and launching awareness campaigns;*
- (c) Ensure that victims of sexual abuse and exploitation have access to appropriate recovery and reintegration programmes and services;*
- (d) Provide the Hot-Line Telephone Service for Psychological Aid with adequate human and financial resources; and*
- (e) Seek assistance from, inter alia, WHO and UNICEF.”* (Yemen CRC/C/15/Add.267, para. 68)

In addition it consistently urges States to take into consideration the recommendations adopted at the 1996 and 2001 World Congresses against Commercial Sexual Exploitation of Children.

Groups particularly vulnerable to sexual exploitation

The Committee has identified certain risk factors, or groups of children who are at particular risk of sexual abuse and exploitation:

“... The Committee notes with grave concern that certain groups of children are at a particularly higher risk of being sold and trafficked, including girls, internally displaced children, street children, orphans, children from rural areas, refugee children and children belonging to more vulnerable castes...” (Nepal CRC/C/15/Add.26, para. 95)

“... The Committee notes, however, concerns relating to the vulnerability of street children and, in particular, Aboriginal children who, in



disproportionate numbers, end up in the sex trade as a means of survival..." (Canada CRC/C/15/Add.215, para. 52)

"The Committee is deeply concerned at the increasing number of children engaged in prostitution... the Committee is concerned about certain risk factors, including persisting poverty, the high rate of unemployment, difficult family circumstances that lead to runaways from home and a growth in tourism, which may increase sexual exploitation and trafficking in children." (Mongolia CRC/C/15/Add.264, para. 64)

Girls

The Platform for Action of the Fourth World Conference on Women notes: "Girls often face pressures to engage in sexual activity. Due to such factors as their youth, social pressures, lack of protective laws, or failure to enforce laws, girls are more vulnerable to all kinds of violence, particularly sexual violence, including rape, sexual abuse, sexual exploitation, trafficking..." (Platform for Action, para. 269) Proposed actions include the elimination of child pornography, child prostitution, sexual abuse, rape and incest (paras. 277 (b) and (d)). The Report on the follow-up special session of the United Nations General Assembly, held in 2000, proposes action to address the root factors, including external factors, "that encourage trafficking in women and girls for prostitution and other forms of commercialized sex..." (General Assembly, twenty-third special session, 10 June 2000, A/RES/S-23/3, para. 70(a))

Child domestic workers, who are primarily girls, are often exposed to sexual abuse. UNICEF's *The State of the World's Children 1997* suggests: "Sexual abuse is often regarded by the employer as part of the employment terms" (p. 33). In addition the Committee condemns practices which are used in various countries to make sexual exploitation of girls more socially acceptable, such as 'temporary marriages' in some Islamic countries or 'sugar daddies' in the Caribbean:

"... the Committee ... is concerned that... there have been reports of the practice of 'enjo kosai', or compensated dating... [and] ... the low minimum age of consent, which might contribute to the practice of 'enjo kosai', hampers the prosecution of sexual abuse of children." (Japan CRC/C/15/Add.231, para. 51)

"The... reported cases of the so-called 'sugar daddies', adult men having sexual liaison with girls and providing both girls and their families with monetary and material benefits in exchange for sex, give rise to serious concerns." (Belize CRC/C/15/Add.252, para. 68)

"The Committee is concerned about reports of the trafficking and sale of persons under 18 years of age, particularly young girls from rural areas, which is facilitated by 'temporary marriages' or 'siqeh' – marriages which last from 1 hour to 99 years..." (Islamic Republic of Iran CRC/C/15/Add.254, para. 70)

Boys

It should also be noted that the Committee sometimes raises concerns with countries that fail to protect boys from sexual assault and exploitation, for example:

"... the Committee ... is concerned that... The Penal Code maintains a narrow definition of rape as an act committed by a male against a female..."

"The Committee recommends that the State Party... amend legislation on sexual exploitation and abuse to ensure equal protection for boys and girls." (Japan CRC/C/15/Add.231, paras. 51 and 52)

"The Committee expresses its deep concern at the information that child prostitution is increasing and that not only girls, but also boys who work as vendors, couriers or domestic servants, are particularly vulnerable to sexual exploitation..." (Algeria CRC/C/15/Add.269, para. 78)

"... The Committee is concerned about the information that sexual exploitation, particularly sex tourism, is growing in the country and that many girls and boys at a very young age are engaged in commercial sexual exploitation." (Ghana CRC/C/GHA/CO/2, para. 67)

Children with disabilities

Difficulties of communication and the institutionalization of many children with disabilities may make them particularly prone to sexual exploitation and abuse (see article 23, page 321). Article 16 of the Convention on the Rights of Persons with Disabilities, adopted in December 2006, requires States to "take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects", such as the independent monitoring of services for people with disabilities, educating persons with disabilities and their carers on how to avoid, recognize and report abuse and the effective prosecution of abusers, where appropriate.

The complementary Standard Rules on the Equalization of Opportunities for Persons with Disabilities notes: "Persons with disabilities and their families need to be fully informed about taking precautions against sexual and other forms





of abuse. Persons with disabilities are particularly vulnerable to abuse in the family, community and institutions and need to be educated on how to avoid the occurrence of abuse, recognize when abuse has occurred and report on such acts.” (Rule 9(4))

The *World Report on Violence against Children*, accompanying the United Nations Secretary-General’s Study on this subject, observes that children with disabilities may also be more vulnerable to sexual exploitation, noting that, for example: “Some brothel proprietors in Thailand reportedly seek out girls who are deaf, calculating that they will be less able to protest or escape since they will not be able to communicate easily with customers or employers.” (Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006, p. 246)

Children in armed conflict

The study on the *Impact of Armed Conflict on Children* suggests: “Rape is not incidental to conflict. It can occur on a random and uncontrolled basis due to the general disruption of social boundaries and the license granted to soldiers and militias. More often, however, it functions like other forms of torture and is used as a tactical weapon of war to humiliate and weaken the morale of the perceived enemy. During armed conflict, rape is used to terrorize populations or to force civilians to flee.”

Twelve country studies on sexual exploitation of children in situations of armed conflict were prepared for the report, which show that women and girls are particularly at risk; children affected by gender-based violence also include those who have witnessed the rape of a family member and those who are ostracized because of an assault on a mother. The studies illustrate how poverty, hunger and desperation may force women and girls into prostitution and how children have been trafficked from conflict situations to work in brothels in other countries. Sexual exploitation has a devastating effect on physical and emotional development; unwanted and unsafe sex is likely to lead to sexually transmitted diseases and HIV/AIDS, which not only affect immediate health but also future sexual and reproductive health and mortality. The report provides specific recommendations on the subject of sexual exploitation and gender-based violence (*Impact of Armed Conflict on Children*, Report of the expert of the Secretary-General, Ms Graça Machel, 26 August 1996, A/51/306, paras. 91 *et seq.*, and 110; see box).

Detailed relevant practical advice for conflict situations is provided in *Guidelines for HIV Interventions in Emergency Settings* (1996),

a joint publication of UNHCR, WHO and UNAIDS, which emphasizes that “HIV spreads fastest in conditions of poverty, powerlessness and social instability – conditions that are often at their most extreme during emergencies” (p. 2). The connection between HIV infection and children in armed conflict is also stressed by the Committee in its General Comment No. 3 on “HIV/AIDS and the rights of the child”:

“The Committee considers that the relationship between HIV/AIDS and the violence or abuse suffered by children in the context of war and armed conflict requires specific attention. Measures to prevent violence and abuse in these situations are critical, and States Parties must ensure the incorporation of HIV/AIDS and child rights issues in addressing and supporting children – girls and boys – who were used by military or other uniformed personnel to provide domestic help or sexual services, or who are internally displaced or living in refugee camps. In keeping with States Parties’ obligations, including under articles 38 and 39 of the Convention, active information campaigns, combined with the counselling of children and mechanisms for the prevention and early detection of violence and abuse, must be put in place within conflict- and disaster-affected regions, and must form part of national and community responses to HIV/AIDS.” (Committee on the Rights of the Child, General Comment No. 3, 2003, CRC/GC/2003/3, para. 38)

The Committee observed to Sierra Leone:

“The Committee expresses its deep concern with regard to the many incidents of sexual exploitation and abuse of children, particularly in the context of the conscription or abduction of children by armed persons and in the context of attacks on civilian populations by armed persons, and particularly with regard to girls. The Committee is also concerned at reports of commercial sexual exploitation and of widespread sexual abuse of girls within the family, within internally displaced person camps and within communities.

“The Committee urges the State Party to include studies of incidents of sexual abuse in the context of the armed conflict among the issues to be discussed by the truth and reconciliation commission. The Committee recommends that the State Party initiate information campaigns alerting the public to the risks of sexual abuse within the family and within communities. In addition, the Committee urges the State Party to provide the necessary psychological and material assistance to the victims of such exploitation and abuse and to assure their protection from any possible social stigmatization.” (Sierra Leone CRC/C/15/Add.116, paras. 87 and 88)

Sexual exploitation and armed conflict

In her study, *Impact of Armed Conflict on Children*, Ms Graça Machel submits the following specific recommendations regarding sexual exploitation and gender-based violence:

- (a) All humanitarian responses in conflict situations must emphasize the special reproductive health needs of women and girls including access to family planning services, pregnancy as a result of rape, sexual mutilation, childbirth at an early age or infection with sexually transmitted diseases, including HIV/AIDS. Equally important are the psychosocial needs of mothers who have been subjected to gender-based violence and who need help in order to foster the conditions necessary for the healthy development of their children;
- (b) All military personnel, including peacekeeping personnel, should receive instruction on their responsibilities towards civilian communities and particularly towards women and children as part of their training;
- (c) Clear and easily accessible systems should be established for reporting on sexual abuse within both military and civilian populations;
- (d) The treatment of rape as a war crime must be clarified, pursued within military and civilian populations, and punished accordingly. Appropriate legal and rehabilitative remedies must be made available to reflect the nature of the crime and its harm;
- (e) Refugee and displaced persons camps should be so designed as to improve security for women and girls. Women should also be involved in all aspects of camp administration but especially in organizing distribution and security systems. Increased numbers of female personnel should be deployed to the field as protection officers and counsellors;
- (f) In every conflict, support programmes should be established for victims of sexual abuse and gender-based violence. These should offer confidential counselling on a wide range of issues, including the rights of victims. They should also provide educational activities and skills training.

(“Impact of Armed Conflict on Children”, Report of the expert of the Secretary-General, Ms Graça Machel, A/51/306, 26 August 1996, para. 110)



And Colombia:

“... The Committee is especially concerned over the situation in rural areas where children are at risk as a consequence of the ongoing internal armed conflict. In particular, the Committee expresses concern regarding the increasing number of girls who are subjected to sexual violence and is disturbed by numerous reports of rapes committed by members of the military. The Committee is also concerned about other forms of torture and cruel, inhuman and degrading treatment by law enforcement officials, including in detention facilities, and also over abuses in institutional care.

“The Committee urges the State Party to take effective measures to protect children from torture and other cruel, inhuman or degrading treatment. The Committee emphasizes the urgent need to investigate and sanction all reported cases, committed by the military, law enforcement officials or any person acting in an official capacity, in order to break the pervasive cycle of impunity of serious human rights violations. The Committee recommends that the State Party ensure that all child victims

of torture, cruel and degrading treatment are provided access to physical and psychological recovery and social reintegration as well as compensation, giving due consideration to the obligations enshrined in articles 38 and 39 of the Convention.” (Colombia CRC/C/COL/CO/3, paras. 51 and 52)

Refugees and internally displaced children

The Office of the United Nations High Commissioner for Refugees points out that refugees, in particular unaccompanied children, are especially vulnerable to sexual violence. UNHCR published *Sexual Violence against Refugees: Guidelines on Prevention and Response* in 1995. The report states: “Sexual violence against refugees is widespread. Women and young girls – and, less frequently, men and boys – are vulnerable to attack, both during their flight and while in exile. They are vulnerable from many quarters and in every case, the physical and psychological trauma that results can only add to the pain of displacement and the bitterness of exile.” It



provides a detailed background, preventive measures and practical measures to be taken in response to incidents of sexual violence. Among categories of refugees identified as being most at risk of sexual violence are unaccompanied children, children in foster care arrangements and those in detention or detention-like situations. (*Sexual Violence against Refugees: Guidelines on Prevention and Response*, UNHCR, 1995, preface and para. 1.2)

These concerns are reflected in the Committee's General Comment No. 6 on "Treatment of unaccompanied or separated children outside their country of origin":

"Unaccompanied or separated children in a country outside their country of origin are particularly vulnerable to exploitation and abuse. Girls are at particular risk of being trafficked, including for purposes of sexual exploitation.

"Articles 34 to 36 of the Convention must be read in conjunction with special protection and assistance obligations to be provided according to article 20 of the Convention, in order to ensure that unaccompanied and separated children are shielded from trafficking, and from sexual and other forms of exploitation, abuse and violence." (Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, paras. 50 and 51. See also article 35, page 531.)

Legislative and other measures

The Committee on the Rights of the Child has placed a particular emphasis on the need for legislation as a basis for protection against sexual exploitation. The *Guidelines for Periodic Reports (Revised 2005)* requests information on measures to protect the child from all forms of sexual exploitation and sexual abuse, and specifically requests the State to provide data on prosecutions, including: "Number of cases of commercial sexual exploitation, sexual abuse, sale of children, abduction of children and violence against children reported during the reporting period... [and]... Number and percentage of those that have resulted in sanctions, with information on the country of origin of the perpetrator and the nature of the penalties imposed..." (See page 703.)

The Committee has proposed that legal reform should include criminalizing the use of child prostitutes and the possession of child pornography, as well as the publication and distribution of child pornography:

"The Committee is deeply concerned that appropriate, in particular legislative, measures have not yet been taken to forbid the possession of child pornography and the purchasing of sexual services from child

prostitutes. It is also seriously concerned at the existence of sex telephone services accessible by children...

"In the process of reforming the Penal Code, the Committee strongly recommends that the possession of child pornography materials and the purchase of sexual services from child prostitutes be made illegal..."

The Committee went on to recommend in addition:

"... that the State Party take all appropriate measures to protect children from accessing sex telephone services and from the risk of being sexually exploited by paedophiles through these telephone services that can be accessed by anyone..." (Finland CRC/C/15/Add.53, paras. 19 and 29)

When it examined Finland's Second and Third Reports, the Committee welcomed legal reforms to criminalize the purchase of sex from a child, the possession of child pornography, sexual offences committed abroad by Finnish citizens and the trafficking of children to and through Finland (*Finland CRC/C/15/Add.132, para. 4 and Finland CRC/C/15/Add.272, para. 52*).

The law has to keep abreast with technological changes that offer new ways of exploiting vulnerable children. The *World Report on Violence against Children* accompanying the Secretary-General's Study on this subject, notes that there is worldwide concern about the potential of the Internet to expose children to images of violence and sexual violence, to disseminate child pornography and to enable predatory abusers to 'groom' and manipulate children they contact through cyber-space: "... protecting children from the negative potential of technology is a serious challenge. The need for a *focus on prevention* as an absolute imperative in addressing child safety and information and communication technologies was a message that was reiterated throughout the Study process..." The Report recommends: "As well as educating children and parents, Governments should work with the industry to devise global standards for child protection, undertake research on protective hardware and software solutions, and fund worldwide education campaigns on safe use of the new technologies. Governments should also pursue law enforcement approaches, including criminalizing those who make, distribute, possess or profit from pornography involving children." (Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006, pp. 314 and 338)

For example the Committee raised with Sweden reports of cases of sexually abused Swedish

children as a result of contacts via the Internet and recommended that

"... the State Party... strengthen the protection measures for children who are using the Internet and the awareness-raising programmes for children about the negative aspects of the Internet, including by working with service providers, parents and teachers ... [and] ... strengthen the legislation against possession and production of child pornography, including by prohibiting the display of child pornography on the Internet by service providers..." (Sweden CRC/C/15/Add.248, paras. 43 and 44)

And it commended Denmark for the fact that its *"... Office of the National Commissioner of Police has established a special IT Investigation Unit which provides for the investigation of criminal offences committed through the Internet, particularly cases concerning child pornography."* (Denmark CRC/C/DNK/CO/3, para. 56)

However, the Committee is particularly concerned that, while commercial sexual exploitation must be criminalized, the child survivors of it must not be criminalized or penalized, as it told Indonesia and Armenia:

"The Committee wishes to reiterate its opinion that children as victims of sexual abuse and exploitation can never be held responsible or guilty of such acts..." (Indonesia CRC/C/15/Add.223, para. 82)

"... the Committee is deeply concerned that persons under 18 years of age engaged in prostitution are prosecuted under the Criminal Code, rather than assisted as victims." (Armenia CRC/C/15/Add.225, para. 64)

Age of sexual consent

Most countries define the age at which children are to be judged as able to consent to sexual activity which varies widely between the ages of 12 and 18. The Committee has expressed concern at low ages, and at discrimination between the marriage ages for girls and for boys (it appears that ability to consent to sexual activities is assumed at marriage age in all States). The definition of sexual abuse of children covers more than non-consensual activities, including sexual activities with children below the age of consent, whether or not the child appeared willing or even initiated the activity. In most societies, sexual relations without consent, or involving any form of coercion, are prohibited whatever the age or status of the participants (although the criminalizing of rape within marriage may not yet have occurred in all countries).

During the drafting of what became article 34 of the Convention on the Rights of the Child,

representatives from France and the Netherlands, who had proposed inclusion of an article on protection of children from exploitation, including, in particular, sexual exploitation, stated that the purpose was not to regulate the sexual life of children but rather to combat the sexual exploitation of children. During the drafting there was an unsuccessful attempt to delete the word "unlawful" from paragraph (a), which would have implied, according to the Convention's definition of a child, that all sexual activity with under-18-year-olds was to be prevented (E/CN.4/1987/25, pp. 15 to 24; Detrick, p. 434).

As discussed in relation to article 1, the Committee has endorsed the recommendation of the Committee to End Discrimination against Women that 18 should be the minimum age for marriage (see page 8). This does not, however, mean that it supports 18 as the minimum age for sex, though the Committee certainly expresses concern if no age for sexual consent is set in law.

"While welcoming the adoption of the Code on Persons and the Family which sets the legal age for marriage for boys and girls at 18, the Committee regrets the lack of clarity on the legal minimum age of sexual consent as there is no provision to this effect in the State Party's domestic legislation." (Benin CRC/C/BEN/CO/2, para. 69)

Aside from the bar on discrimination in article 2, the Convention is not prescriptive about the age at which the child is to be given the right to consent to sexual activity. Such limits need to be judged against the overall principles of respect for the child's evolving capacities, and for his or her best interests and health and maximum development. And though the Committee has not recommended a particular age for consent, it has in the case of some States Parties proposed that the age should be raised. Twelve years is considered to be manifestly too low (see, for example, Indonesia CRC/C/15/Add.223, para. 81) and the Committee has also expressed concern about 14 years:

"... the Committee is concerned at the rather low age for sexual consent (14 years), which may not provide adequate protection for children older than 14 years against sexual exploitation." (Iceland CRC/C/15/Add.217, para. 38)

Sexual exploitation of children may well continue beyond any set age for consent, and the protection of article 34 must extend to the age of 18. For this reason the Committee was critical of the situation in the Russian Federation:

"The Committee is concerned about the large number of children and young people being sexually exploited in the State Party."





It is concerned that teenage prostitution is an acute problem in the State Party. It is also concerned that children aged 14 to 18 years old are not legally protected from involvement in prostitution and pornography.” (Russian Federation CRC/C/RUS/CO/3, para. 78)

In some countries a minimum age at which a child is permitted to consent to sexual activities is specified, and in addition a higher age when the sexual relationship is with a person in a position of trust or authority over the child (relation, teacher, caregiver, and so on). Although such distinctions may be made between the perpetrators, the Committee is concerned about any form of discrimination between groups of victims, for example between boys and girls:

“The Committee is concerned at... legislation making sexual exploitation of children only a criminal offence up to the age of 16 and not 18, and the exclusion of boys from this legislation.” (Netherlands Antilles CRC/C/15/Add.186, para. 60)

“The Committee is concerned that according to some recent studies a considerable number of children are victims of sexual exploitation... In addition, it notes that the law on sexual abuse is biased against the boy child.” (Uganda CRC/C/UGA/CO/2, para. 75)

In some countries there are also different ages of consent for heterosexuality and homosexuality. These differences also breach article 2 of the Convention and the Committee has urged States to remove discrimination based on sexual orientation:

“... concern is expressed at the insufficient efforts made to provide against discrimination based on sexual orientation. While the Committee notes the Isle of Man’s intention to reduce the legal age for consent to homosexual relations from 21 to 18 years, it remains concerned about the disparity that continues to exist between the ages for consent to heterosexual (16 years) and homosexual relations.

“It is recommended that the Isle of Man take all appropriate measures, including of a legislative nature, to prevent discrimination based on the grounds of sexual orientation and to fully comply with article 2 of the Convention.” (United Kingdom – Isle of Man CRC/C/15/Add.134, paras. 22 and 23. See also United Kingdom – Overseas Territories CRC/C/15/Add.135, paras. 25 and 26)

Sex tourism – the principle of “extraterritoriality”

The adoption of the Optional Protocol on the sale of children, child prostitution and child pornography has focused ratifying States’ attention on the need to legislate for sex offences com-

mitted by their citizens when abroad, and, if necessary, to extradite them for prosecution (see page 669). More than half of the States ratifying the Convention are now also parties to the Optional Protocol, and will be examined on this issue. For those that have not ratified or acceded to the Protocol, article 34 remains as a safeguard.

Complaints and judicial procedures

In the report of its Day of General Discussion on the “Administration of juvenile justice”, the Committee noted that children were often denied the right to lodge complaints when they were victims of violation of their fundamental rights, including in cases of ill-treatment and sexual abuse. The need for children to have access to effective complaints procedures has been a consistent concern of the Committee (Report on the tenth session, October/November 1995, CRC/C/46, paras. 220 and 226; see also article 12, page 158). Children in institutions are especially vulnerable, often isolated from independent adults; children with disabilities may also be vulnerable, because of communication and other difficulties.

Children’s complaints, and their evidence when cases come to court, must be taken seriously, in line with the Convention. The Committee recommends that States follow the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (see page 673). These were adopted in 2005 by United Nations Economic and Social Council resolution 2005/20 and stress that child victims and witnesses should be treated with dignity and compassion, given effective assistance including information and an opportunity to express their views; to have their safety and privacy fully protected and to be offered reparation.

Other measures

The Committee has also expressed concern about States’ failure to meet the social needs of sexually abused children, for example Kazakhstan:

The Committee is concerned at:

- (a) The growing involvement of children in the sex industry and the apparent indifference of society towards the issue of child prostitution, including reports of parents themselves reportedly forcing their children to earn money through prostitution;*
- (b) The lack of specialized centres to accommodate and provide qualified services, including psychotherapeutic and rehabilitation and reintegration programmes, for child victims of sexual violence.” (Kazakhstan CRC/C/15/Add.213, para. 72)*

The Agenda for Action of the Stockholm World Congress against Commercial Sexual Exploitation of Children (see page 516) recommends non-legislative action on sexual abuse, for example:

- access to education to improve the status of children;
- improvement of access to all services and providing a supportive environment for families and children vulnerable to commercial sexual exploitation;
- maximize education on the rights of the child; promote children's rights in family education and family development assistance;
- identify or establish peer education programmes and monitoring networks to combat commercial sexual exploitation;
- formulate or strengthen and implement gender-sensitive national social and economic policies and programmes to assist vulnerable children, and families and communities in resisting acts which can lead to commercial sexual exploitation, "with special attention to family abuse, harmful traditional practices and their impact on girls, and to promoting the value of children as human beings rather than commodities; and reduce poverty by promoting gainful employment, income generation and other supports";
- mobilize the business sector, including the tourist industry, against the use of its networks and establishments for commercial sexual exploitation;
- encourage media professionals to develop strategies which strengthen the role of the media in providing information of the highest quality, reliability and ethical standards concerning all aspects of commercial sexual exploitation;
- target those involved with commercial sexual exploitation of children with information, education and outreach campaigns and programmes to promote behavioural changes to counter the practice.

(A/51/385, pp. 6 and 7)

Recovery and reintegration

Article 39 (see page 589) requires States Parties to take all appropriate measures to promote physical and psychological recovery and social reintegration of child victims of any form of abuse, exploitation and so forth.

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

"Adolescents who are sexually exploited, including in prostitution and pornography, are exposed to significant health risks, including STDs, HIV/AIDS, unwanted pregnancies, unsafe abortions, violence and psychological distress. They have the right to physical and psychological recovery and social reintegration in an environment that fosters health, self-respect and dignity (art. 39). It is the obligation of States Parties to enact and enforce laws to prohibit all forms of sexual exploitation and related trafficking; to collaborate with other States Parties to eliminate intercountry trafficking; and to provide appropriate health and counselling services to adolescents who have been sexually exploited, making sure that they are treated as victims and not as offenders." (Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, para. 37)

The Committee has emphasized the importance of adopting a non-punitive approach to child victims of sexual exploitation, including training on how to investigate complaints in a child-sensitive manner (see above, page 524). The Agenda for Action of the Stockholm World Congress suggests that social, medical and psychological counselling and other support should be provided to child victims and their families; that there should be gender-sensitive training of medical personnel, teachers, social workers, non-governmental organizations and others working to help child victims; that social stigmatization of victims should be prevented and their recovery and reintegration in communities and families should be facilitated; and that where institutionalization is necessary, it should be for the shortest possible period.

The Committee recommended that Uzbekistan improve its rehabilitation and prevention measures as follows:

- "... (a) Train law enforcement officials, social workers and prosecutors on how to receive, monitor and investigate complaints, in a child-sensitive manner;*
- (b) Increase the number of trained professionals providing psychological counselling and other recovery services to victims;*
- (c) Develop preventive measures that target those soliciting and providing sexual services, such as materials on relevant legislation on the sexual abuse and exploitation of minors as well as on education programmes, including programmes in schools on healthy lifestyles."* (Uzbekistan CRC/C/UZB/CO/2, paras. 67 and 68)



The Yokohama Global Commitment 2001

The statement adopted following the Second World Congress against Commercial Sexual Exploitation of Children (Yokohama, Japan, 17-20 December 2001) begins by reviewing developments since the First World Congress (Stockholm, Sweden, 1996). It reaffirms “as our primary considerations, the protection and promotion of the interests and rights of the child to be protected from all forms of sexual exploitation”, and goes on to identify and welcome developments, visible in a number of countries, since 1996. But the statement recognizes that much more needs to be done to protect children globally and expresses concern at the delays in the adoption of needed measures in various parts of the world. The second part of the statement consists of the Global Commitment:

“5. We have come together to:

reiterate the importance and the call for more effective implementation of the Convention on the Rights of the Child by States Parties and related instruments, and underline our belief in the rights of children to be protected from commercial sexual exploitation in the form of child prostitution, child pornography and trafficking of children for sexual purposes;

encourage early ratification of the relevant international instruments, in particular, ILO Convention No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;

reaffirm our commitment to build a culture of respect for all persons based upon the principle of non-discrimination and to eliminate commercial sexual exploitation of children, in particular by sharing the lessons learnt since the First World Congress, and by improving cooperation in this regard;

recommit to the Declaration and Agenda for Action of the First World Congress (‘The Stockholm Declaration and Agenda for Action’), and in particular to developing national agendas, strategies or plans of action, designated focal points and comprehensive gender-disaggregated data collection, and effective implementation of measures, including child-rights based laws and law enforcement;

reinforce our efforts against commercial sexual exploitation of children, in particular by addressing root causes that put children at risk of exploitation, such as poverty, inequality, discrimination, persecution, violence, armed conflicts, HIV/AIDS, dysfunctioning families, the demand factor, criminality, and violations of the rights of the child, through comprehensive measures, including improved educational access for children, especially girls, anti-poverty programmes, social support measures, public awareness-raising, physical and psychological recovery and social reintegration of child victims, and action to criminalize the commercial sexual exploitation of children in all its forms and in accordance with the relevant international instruments, while not criminalizing or penalizing the child victims;

emphasize that the way forward is to promote closer networking among key actors to combat the commercial sexual exploitation of children at the international, inter-regional, regional/sub-regional, bilateral, national and local levels, in particular, among communities and the judicial, immigration and police authorities, as well as through initiatives interlinking the young people themselves;

ensure adequate resource allocation to counter commercial sexual exploitation of children, and to promote education and information to protect children from sexual exploitation, including educational and training programmes on the rights of the child addressed to children, parents, law enforcers, service providers and other key actors;

reiterate that an essential way of sustaining global action is through regional/sub-regional and national agendas, strategies or plans of action that build on regional/sub-regional and national monitoring mechanisms and through strengthening and reviewing existing international mechanisms with a monitoring process, to improve their effectiveness as well as the follow-up of their recommendations, and to identify any reforms that may be required;



take adequate measures to address negative aspects of new technologies, in particular, child pornography on the Internet, while recognizing the potential of new technologies for the protection of children from commercial sexual exploitation, through dissemination and exchange of information and networking among partners;

reaffirm the importance of the family and **strengthen** social protection of children, young people and families through awareness-raising campaigns and community-based surveillance/monitoring of commercial sexual exploitation of children; commit ourselves to promoting cooperation at all levels and to combining efforts to eliminate all forms of sexual exploitation and sexual abuse of children worldwide;

declare that the sexual exploitation of children must not be tolerated and **pledge** to act accordingly.”



Bilateral and multilateral measures

One reason why the importance of international cooperation to prevent and combat sexual exploitation of children is recognized is because many forms of exploitation have become transnational, for example sex tourism, trafficking in child prostitutes, and dissemination of child pornography including through the Internet.

The conclusions and recommendations of the International Conference on Combating Child Pornography on the Internet (Vienna, 29 September – 1 October 1999) emphasized the need for a policy of zero tolerance: “This requires clear and strong legislation and effective law enforcement. Our efforts must make it clear to any potential perpetrator that the Internet is no longer an anonymous place for crimes and illegal activities.”

The Committee’s *Guidelines for Periodic Reports* seeks information on “bilateral, regional and multilateral agreements”, including judicial

cooperation and cooperation among law enforcement officials. The Agenda for Action, adopted at the Stockholm World Congress in 1996, promoted “better cooperation between countries and international organizations, including regional organizations, and other catalysts which have a key role in eliminating the commercial sexual exploitation of children, including the Committee on the Rights of the Child, UNICEF, ILO, UNESCO, UNDP, WHO, UNAIDS, UNHCR, IOM, the World Bank/IMF, INTERPOL, United Nations Crime Prevention and Criminal Justice Division, UNFPA, the World Tourism Organization, the United Nations Commissioner for Human Rights, the United Nations Centre for Human Rights, the United Nations Commission on Human Rights and its Special Rapporteur on the Sale of Children, and the Working Group on Contemporary Forms of Slavery, each taking guidance from the Agenda for Action in their activities in accordance with their respective mandates...” (A/51/385, p. 5)

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

Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 34, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 34 is relevant to **departments of justice, law enforcement, health, social welfare, and education**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 34 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 34 likely to include the training of **all those working with children and their families, teachers, social and community workers, health workers, police, judges and court officials, and parenting education**)?

• Specific issues in implementing article 34

- Has the State considered the implications for law, policy and practice of the Declaration and Agenda for Action of the 1996 World Congress against Commercial Sexual Exploitation of Children and the 2001 Yokohama Global Commitment and developed a national agenda for action?
- Has the State carried out and/or promoted education and information strategies against sexual exploitation of children?
- Has the State ensured the dissemination of appropriate sex education and other information for children?
- Has the State established an age or ages below which the child is deemed to be unable to consent to sexual activities and ensured there is no discrimination on grounds of sexual orientation?
- Has the State defined unlawful sexual activity involving children?



How to use the checklist, *see page XIX*

- Has the State introduced appropriate legislative, educational and social measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity?
- Has the State ensured that the child victim of such coercion, inducement or exploitative use is not criminalized?
- Has the State reviewed all measures to protect children from sexual exploitation to ensure that measures do not further abuse the child in the process of investigation and intervention?

Has the State introduced appropriate legislation and/or other measures to prevent the exploitative use of children

- in prostitution or other unlawful sexual practices?
- in pornographic performances and materials?
- through access to "sex telephones"?
- Has the State established appropriate procedures to give children effective access to complaints procedures and to the courts in cases involving sexual abuse and exploitation, including within their family?

Has the State ensured appropriate measures to protect particularly vulnerable groups, including

- children with disabilities?
- domestic servants?
- children in institutions, including those whose liberty is restricted?
- Has the State introduced legislative and/or other measures to provide child witnesses in cases involving sexual exploitation with appropriate support and protection?

In relation to child pornography, is it an offence to

- possess it?
- produce it?
- disseminate it?
- Has the State reviewed law, policy and practice to ensure appropriate control of child pornography produced and/or disseminated through the Internet and other modern technological means?
- Has the State introduced legislation and/or other appropriate measures to ensure that its nationals can be prosecuted for unlawful sexual exploitation of children in other countries?
- Is there sufficient recording and reporting of disaggregated data, and other information concerning sexual exploitation of children, to provide an accurate situation analysis?
- Has the State acceded to and promoted bilateral and multilateral measures to protect the child from sexual abuse and sexual exploitation?



Reminder: The Convention is indivisible and its articles interdependent.
Article 34 should not be considered in isolation.

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground

Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children

Article 6: right to life and maximum possible survival and development

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

Closely related articles

Articles whose implementation is particularly related to that of article 34 include:

Article 18: parental responsibilities

Article 19: protection from all forms of violence

Article 20: alternative care

Article 22: refugee children

Article 23: children with disabilities

Article 24: health and health care

Article 27: adequate standard of living

Article 28: right to education

Article 32: child labour

Article 33: drug abuse

Article 35: sale, trafficking and abduction

Article 38: armed conflict

Article 39: rehabilitative care for child victims

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Prevention of abduction, sale and trafficking

article

35



Text of Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 35 acts as a fail-safe protection for children at risk of abduction, sale or trafficking. Article 11 protects against the illicit “transfer or non-return of children abroad” (usually undertaken by relatives, not for profit); article 21 provides that international adoption must not involve “improper financial gain”; article 32 protects children against exploitative or harmful work; article 33 from involvement in drug trafficking; article 34 from their use in the sex

trade; and article 36 from all other forms of exploitation. Article 35 is a safety net to ensure that children are safe from being abducted or procured for these purposes or for any other purpose.

In 2002 the Optional Protocol on the sale of children, child prostitution and child pornography came into force. This requires ratifying States to take measures to criminalize and prosecute all forms of sale of children, and thus reinforces the protection of article 35. ■

Summary

Background

In the initial phases of drafting the Convention on the Rights of the Child, articles 34, 35 and 36 were condensed into one, but the Working Group agreed it would be more useful to tease out the separate strands of child exploitation. Article 35 was introduced because the sale or trafficking of children was wider in scope than that of article 34, which relates to all forms of sexual exploitation or abuse (E/CN.4/1987/25, pp. 15 to 24; Detrick, p. 429).

How does the “abduction of, the sale of or traffic in children” manifest itself? Children can be unlawfully abducted abroad by their natural parents or relatives in disputes over custody in breach of article 11 (see page 143), but article 35 also requires measures to deal with internal abductions within the jurisdiction. In addition, children in poor countries can be sold into the equivalent of slavery, through bonded labour or debt repayment, and they can be trafficked for the purposes of begging, all of which are also violations of article 32 (see page 479). In conditions of war, children can be forced to become soldiers or servants to armed forces (see article 38, page 573). Children can also be trafficked for the purposes of sex – into prostitution or the production of pornography or, less overtly, through forced marriages or traditional practices (see article 34, page 513). Children, particularly babies, are a desirable commodity for adoption: article 21 requires measures to ensure that intercountry adoption “does not result in improper financial gain for those involved in it” (see page 293). There is also an anxiety that children’s bodies are being used to provide organs for transplants, in breach of article 6.

Thus article 35 provides a double protection for children: the main forms of child trafficking are dealt with in those different articles, but blanket action on abduction, sale or traffic “for any purpose or in any form” is also required by this article.

In 1992 the Special Rapporteur on the sale of children, child prostitution and child pornography was appointed to review international and national developments and make detailed recommendations; since then three successive Rapporteurs have been appointed. The Rapporteur visits and reports on countries where trafficking is known to occur, as well as making annual reports to the Human Rights Commission (now Human Rights Council) on thematic topics, including: “Demand for sexual services deriving from exploitation” (E/CN.4/2006/67, 2006); “Child pornography on

the Internet” (E/CN.4/2005/78, 2005) and “Legal consequences of the sale of children, child prostitution and child pornography, and particularly on the criminalization of child victims and recent national policy and legislative developments to address these concerns” (E/CN.4/2003/79, 2003). These and other reports by the Special Rapporteur are available at www.ohchr.org/english/issues/children/rapporteur/annual.htm.

One initiative on which the Rapporteur was active was the adoption by the United Nations General Assembly of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. This came into force in 2002 (see page 669). The Committee has issued revised detailed guidelines on the information States Parties should provide, much of which is relevant to implementation of article 35 (see page 707). In addition, the *Guidelines for Periodic Reports (Revised 2005)* for the Convention asks States to provide disaggregated data in relation to article 35 on the number of children involved in trafficking for the purpose of sexual exploitation, labour and other purposes; the number who were provided with rehabilitative programmes; the number and percentage of cases that have resulted in sanctions on the perpetrator (and his or her country of origin); and the number of border and law enforcement officials who have received training on preventing trafficking and respecting the dignity of trafficked children (see page 701).

In 1997 the Secretary-General appointed a Special Representative for children and armed conflict who is mandated to work closely with the Committee on the Rights of the Child and to report annually to the General Assembly and to the Human Rights Council. In 2005 the Special Representative proposed to the Commission on Human Rights (now Council) that the United Nations and national governments should monitor and report on six priority areas of concern, which “constitute especially egregious violations against children”. One of the six areas was the abduction of children in armed conflict zones.

There are also a number of other international treaties which address this issue, such as the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery and the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. These have been augmented by conventions and protocols, some specific to children, principally the 1999 ILO Worst Forms of Child Labour Convention (No.182); the Optional



Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (adopted by the General Assembly in 2000) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (also adopted by the General Assembly in 2000). (See Appendices 3 and 4 on pages 759, 692 and 761 and discussion on pages 479 and 659). “Trafficking in persons” is defined in article 3 of this Protocol as follows:

“(a) ‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

But where children are concerned, the article goes on to provide: “(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article.”

“Sale of children” is defined in article 2 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography as follows:

“Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.”

Abduction does not have to involve remuneration or a commercial motive. According to the Hague Convention on the Civil Aspects of International Child Abduction, “The removal or the retention of a child is to be considered wrongful where it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention.” (Article 3)

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, South Africa, September 2001) in its Declaration notes that victims of

trafficking are particularly exposed to racism, racial discrimination, xenophobia and related intolerance. It urges States to allocate resources to provide comprehensive programmes designed to rehabilitate victims and to train the relevant officials who deal with victims of trafficking (A/CONF.189/12, Declaration, para. 30; Programme of Action, para. 64).

The outcome document of the United Nations General Assembly’s special session on children emphasizes the importance and urgency of the issue, calling on States to:

“Take necessary action, at all levels, as appropriate, to criminalize and penalize effectively, in conformity with all relevant and applicable international instruments, all forms of sexual exploitation and sexual abuse of children, including within the family or for commercial purposes, child prostitution, paedophilia, child pornography, child sex tourism, trafficking, the sale of children and their organs and engagement in forced child labour and any other form of exploitation, while ensuring that, in the treatment by the criminal justice system of children who are victims, the best interests of the child shall be a primary consideration.

“Monitor and share information regionally and internationally on the cross-border trafficking of children; strengthen the capacity of border and law enforcement officials to stop trafficking and provide or strengthen training for them to respect the dignity, human rights and fundamental freedoms of all those, particularly, women and children who are victims of trafficking.

“Take necessary measures, including through enhanced cooperation between governments, intergovernmental organizations, the private sector and nongovernmental organizations to combat the criminal use of information technologies, including the Internet, for purposes of the sale of children, for child prostitution, child pornography, child sex tourism, paedophilia and other forms of violence and abuse against children and adolescents.” (Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, A/S-27/19/Rev.1, paras. 45 to 47)

The Committee’s general concerns about abduction

The following sections address the various reasons why children are sold, abducted or trafficked, but one of the most painful aspects of this phenomenon is that parents and others may never know why the child has been taken. The Committee is seriously concerned about States





which do not give sufficient attention to the issue:

“The Committee is concerned at the high number of children who are abducted and sold each year for unknown purposes within and outside Ethiopia. The Committee is deeply concerned at the lack of information in the State Party report on the extent of the problem and the number of children affected.” (Ethiopia CRC/C/ETH/CO/3, para. 75)

“While the Committee recognizes the existence of legislative measures to address sexual exploitation and trafficking of children... as well as the training of law enforcement personnel, the Committee is concerned that a general lack of awareness among young people in Latvia, combined with the economic hardships they face, increases their vulnerability.” (Latvia CRC/C/LVA/CO/2, para. 58)

The Committee is even more concerned about any suggestion of state complicity:

“While welcoming the recent introduction in the Criminal Code of norms prohibiting the trafficking of human beings, the Committee is concerned that not enough is being done to implement these provisions effectively. The Committee also expresses its concern that protection measures for victims of trafficking of human beings are not fully in place and that reported acts of complicity between traffickers and state officials are not being fully investigated and sanctioned.” (Russian Federation CRC/C/RUS/CO/3, para. 80)

The Committee has identified a number of countries as having frighteningly high numbers of trafficked or disappeared children. For example, it noted that in Albania

“... approximately 4,000 children have left the country unaccompanied by their parents” (Albania CRC/C/15/Add.249, para. 66)

and others that act as “transit countries”, for example Algeria which acts as the link between Africa and Western Europe. It also expresses its concern about receiving or destination countries which fail to prevent trafficking or to rescue trafficked children.

Child trafficking has arisen through criminal gangs identifying and supplying an illegal demand, so that children are treated as a commercial product like narcotic drugs. However the Committee also draws attention to the conditions in children’s lives which make such criminality possible:

“... The Committee notes with grave concern that certain groups of children are at a particularly higher risk of being sold and trafficked, including girls, internally displaced

children, street children, orphans, children from rural areas, refugee children and children belonging to more vulnerable castes...” (Nepal CRC/C/15/Add.261, para. 95)

“... The Committee regrets the inadequate legal framework for the prevention and criminalization of sexual exploitation and trafficking of children, and that victims are criminalized and sentenced to detention. In addition, concern is expressed about existing risk factors contributing to trafficking activities, such as poverty, early marriages and sexual abuse.” (Lebanon CRC/C/LBN/CO/3, para. 81)

States that have high levels of trafficking are recommended to take a range of measures, as for example the Committee told Benin:

“The Committee recommends that the State Party further strengthen its efforts to identify, prevent and combat trafficking in children for sexual and other exploitative purposes, including by allocating sufficient resources to these efforts. Furthermore, the Committee recommends that the State Party:

- (a) Improve knowledge, data collection mechanisms and the causal analysis of problems related to child protection, including trafficking, at the central, departmental and local authority levels;*
- (b) Develop and implement a programme for prevention of and protection against trafficking within the framework of the National Policy and Strategy on Child Protection;*
- (c) Strictly enforce all legislation related to trafficking and publish information on the phenomenon, including statistics;*
- (d) Strengthen community-based mechanisms to prevent and monitor child trafficking and exploitation, including the local committees, and, at the same time, undertake preventive actions to improve living conditions and economic opportunities, in the zones of departure as well as high-risk zones paying particular attention to economically disadvantaged families;*
- (e) Continue to pursue efforts for transnational collaboration on combating child trafficking and the establishment and implementation of agreements between neighbouring countries;*
- (f) Provide adequate and systematic training to all professional groups concerned, in particular law enforcement officials and border guards;*
- (g) Launch awareness-raising campaigns for children, parents and other caregivers, in order to prevent trafficking, sexual exploitation and pornography involving children, and sensitize officials working with and for victims of trafficking;*
- (h) Establish a proper monitoring system of children when returned to their families; and*
- (i) Provide, in partnership with stakeholders, adequate programmes of assistance, psycho-*

social rehabilitation and social reintegration for sexually exploited and/or trafficked children, in accordance with the Declaration and Agenda for Action and the Global Commitment adopted at the First and Second World Congresses against Commercial Sexual Exploitation of Children.” (Benin CRC/C/BEN/CO/2, para. 72)

Trafficking and child labour

The Committee has raised concern about the trafficking of children for the purposes of labour, for example in the Sudan, Bangladesh and France:

“The Committee ... remains concerned that the State Party’s legislation does not adequately prohibit slavery or sanction those engaged in it and that thousands of children have been abducted and enslaved in the context of the armed conflict as well as for commercial gain (i.e. sold as servants, agricultural labourers and concubines, or forcibly recruited as soldiers).” (Sudan CRC/C/15/Add.190, para. 61)

“The Committee is deeply concerned at the high incidence of trafficking in children for purposes of prostitution, domestic service and to serve as camel jockeys and at the lack of long-term, concentrated efforts on the part of the State Party to combat this phenomenon.” (Bangladesh CRC/C/15/Add.221, para. 73)

“The Committee welcomes the legislative and other efforts aimed at providing protection of children from economic exploitation. However, the Committee is concerned that illegal networks of forced labour continue to operate and that foreign children fall victims of networks which are not countered vigorously enough.” (France CRC/C/15/Add.240, para. 52)

These are only examples. In many parts of the developing world, children are effectively sold into slavery, often as domestic servants. Children are also used to beg, sometimes having been deliberately deformed. There is also evidence that exploiting children for the purposes of begging is undertaken as a mass commercial enterprise.

In 1999 the International Labour Organization adopted the Worst Forms of Child Labour Convention (No.182) which requires ratifying States to take immediate, effective and time-bound measures, including enacting penal sanctions, to implement the most abhorrent and unacceptable forms of child labour. The definition of these under the Convention is:

“(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.” (Article 3)

Thus this ILO Convention directly impacts on the effective implementation of article 35 (see article 32, page 479 for further information on this aspect of child trafficking).

Trafficking and adoption

As discussed under article 21, the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption is now the main international tool for preventing the international trafficking of children for the purposes of adoption. It prohibits improper financial gain from intercountry adoption, specifying that “only costs and expenses, including reasonable professional fees ... may be charged or paid” (article 32). In addition the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography includes within its scope: “Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption” (article 3(ii)).

There are still reports of intercountry adoption sales, particularly in South and Central America and Eastern Europe, as buyers from the Western world place a premium on Caucasian children; but it is a global phenomenon because the number of hopeful adoptive couples tends to exceed the number of healthy babies available for adoption. And, although intercountry adoptions are the prime source of profit, the clandestine selling of children for adoption also operates internally within many jurisdictions.

Some countries have taken steps to prohibit intercountry adoptions or limit them to cases of abandoned or institutionalized children only. However, such measures, though designed to prevent trafficking and to uphold the child’s rights under articles 7, 8 and 10 (to know and be cared for by parents, to preservation of identity and not to be separated from parents), appear to be a less flexible means of securing the best interests of individual children than those provided by the Hague Convention.





The Committee raised concerns about trafficking children for adoption with countries, for example with Albania:

“The Committee welcomes the ratification by the State Party of the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and the setting up of the Albanian Committee for Adoption, as well as the priority given to domestic solutions. However, it remains concerned at the occurrence of intercountry adoptions, despite the efforts of the State Party to counter such practices, which are not made through the competent authority or accredited body but through individual channels, including cases of sale of children for ‘adoption’.” (Albania CRC/C/15/Add.249, para. 46)

In addition, it has raised concerns about children who are “informally” adopted in order to employ them as domestic servants, effectively enslaving them:

“The Committee is concerned at the high incidence of informal adoption which lacks the guarantees that the best interests of the child are taken into account and which may lead, inter alia, to the use of young informally adopted girls as domestic servants.” (Papua New Guinea CRC/C/15/Add.229, para. 41)

“Given the significant number of Nepalese children who are adopted by foreigners and in the context of the current armed conflict in the State Party, the Committee is concerned at the lack of a clear policy and appropriate legislation on intercountry adoption, which results in various practices, such as trafficking and smuggling of babies. The Committee is particularly concerned about the absence of due judicial process, including technical assessment of the capacity of the parents or guardians, in cases involving termination of the parental responsibility. The Committee also expresses concern regarding the practice of the so-called informal adoption, which may entail exploitation of children as domestic servants.” (Nepal CRC/C/15/Add.261, para. 53)

Trafficking and sexual exploitation

Article 34 addresses children’s right to protection from all forms of sexual exploitation, including prostitution or the use of children in pornography; the Optional Protocol on the sale of children, child prostitution and child pornography has added further protections (see pages 513 and 669).

Child prostitution and child pornography are increasingly profitable businesses in many parts of the world. Naturally this is of deep concern to the Committee, for example:

“While noting that the State Party does not consider that problems relating to trafficking

or other forms of sexual exploitation exist, the Committee remains concerned that such problems may remain ‘hidden’ and that the authorities may be unaware of them. In particular, the Committee refers to the concerns expressed by the Special Rapporteur on the sale of children, child prostitution and child pornography that Cyprus is being used as a transit point for trafficking of young women, including minors.” (Cyprus CRC/C/15/Add.205, para. 55)

“The Committee is concerned about reports of trafficking and sale of persons under 18 years of age, particularly young girls from rural areas, facilitated by ‘temporary marriages’ or ‘siqeh’ – marriages which last from 1 hour to 99 years. It is also concerned at reports of the trafficking of such persons from Afghanistan to Iran, who are apparently sold or sent by their families in Afghanistan for exploitation, including cheap labour.” (Islamic Republic of Iran CRC/C/15/Add.254, para. 70)

“The Committee welcomes the measures taken by the State Party to combat sexual exploitation and trafficking of children... However, the Committee is concerned about the information that a very high number of children – 500,000 according to the data – are victims of sexual exploitation and violence.” (Peru CRC/C/PER/CO/3, para. 67)

“Despite the State Party’s intensified efforts to combat trafficking in children... the Committee expresses its deep concern that Thailand is a source, transit and destination country for trafficking in children for the purposes of sexual exploitation and forced labour. It notes with concern the reported cases of internal trafficking, such as trafficking of girls belonging to indigenous and tribal peoples from north to south. It further notes with concern the increased risk of trafficking and exploitation faced by children of vulnerable groups, as well as the deportation of child trafficking victims. Furthermore, weak law enforcement and implementation of anti-trafficking measures in the State Party give cause for serious concern.” (Thailand CRC/C/THA/CO/2, para. 73)

The Commission on Human Rights, in its 1992 Programmes of Action for the prevention of the sale of children, child prostitution and child pornography, tackled these issues comprehensively, making recommendations on public awareness, social support and education as well as encouraging measures directly impacting on the perpetrators and victims of child trafficking. Many of these recommendations made their way into the Optional Protocol on the sale of children, child prostitution and child pornography (see page 669).

Trafficking and armed conflict

Article 38 of the Convention on the Rights of the Child covers armed conflict and children (page 573). While some of the world's "child soldiers" are volunteers, many are reluctant or forced recruits, a serious form of abduction and forced labour. Such acts may be perpetrated by guerilla forces, in which case the ratifying State may have limited options to intervene, as for example in Uganda:

"The Committee remains deeply concerned at the continued abduction by the Lord's Resistance Army (LRA) of children to be used as child soldiers, sex slaves, and to carry goods and weapons. It is further concerned at the inhuman and degrading treatment of the abducted children.

"The Committee urges the State Party to do everything possible to prevent the abduction of children by the LRA and to rescue those who are still being held. The Committee also urges the State Party to continue to strengthen its efforts, in close cooperation with national and international NGOs and United Nations bodies such as UNICEF, to demobilize child soldiers, to provide them with adequate (short-term) shelter and to support their recovery, reunification with their families and reintegration in their communities. It further recommends that the State Party pay special attention to the needs of girls, who have often been the victims of sexual abuse, and place particular emphasis on access to education that is tailored to their ages." (Uganda CRC/C/UGA/CO/2, paras. 66 and 67)

Sometimes the State compulsorily conscripts children, which has been identified under ILO Convention (No.182) as one of the worst forms of child labour (article 3) and is arguably an abduction of children, contrary to article 35 of the Convention on the Rights of the Child. And sometimes States are weak in their interventions, punitive to the victims or even complicit with the perpetrators:

"The Committee... expresses its extremely deep consternation at the very high number of children who have been forcibly recruited into armed forces and armed groups by all parties involved in the conflict, including children as young as nine years old..." (Liberia CRC/C/15/Add.236, para. 58)

"... the Committee considers that considerable measures for demobilized and captured child soldiers remain lacking. In particular, the Committee is concerned over:

- (a) large-scale recruitment of children by illegal armed groups for combat purposes and also as sex slaves;*
- (b) interrogation of captured and demobilized child soldiers and delays by the military in handing them over to civilian authorities in*

compliance with the time frame of maximum 36 hours stipulated in the national legislation;
(c) the use of children by the army for intelligence purposes;
(d) inadequate social reintegration, rehabilitation and reparations available for demobilized child soldiers;
(e) the number of children who have become victims of landmines;
(f) the failure of the current legal framework for the ongoing negotiation with the paramilitaries to take into account the basic principles of truth, justice and reparations for the victims;
(g) general lack of adequate transparency in consideration of aspects relating to children in the negotiations with illegal armed groups, resulting in continuous impunity for those responsible for recruitment of child soldiers."
(Colombia CRC/C/COL/CO/3, para. 80)

The ILO Worst Forms of Child Labour Convention, 1999 (No.182) includes forced or compulsory recruitment of children under 18 for use in armed conflict within its scope, and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict requires that under-18-year-olds are not compulsorily recruited into the armed forces, and those that are voluntary recruits do not take a direct part in hostilities. States should also take "all feasible measures" to ensure that armed groups that are not part of the State do not recruit children or use them in hostilities (see page 659).

Trafficking and organ transplants

Given the urgent demand within wealthy nations for children's organs for transplants and the total vulnerability of many children in developing nations, the likelihood of a trade in children's organs is high. On the other hand, given the substantial number of medical personnel needed for a successful transplant, it would be difficult to keep such cases secret.

The Special Rapporteur on the sale of children, child prostitution and child pornography reported to the Commission on Human Rights: "The issue of children sold for organ transplantation remains the most sensitive aspect of the Special Rapporteur's mandate. While evidence abounds concerning a trade in adult organs in various parts of the globe, the search for proof concerning a trade in children's organs poses greater difficulties. It should be noted that during the Special Rapporteur's mission to Nepal in 1993, Nepali police informed him of a recent case concerning children trafficked into India for this illicit purpose. There is thus mounting evidence of a market for children's organs." (E/CN.4/1994/84, para. 100)





Allegations and suspicion continue to surface in the world's media and there certainly are cases of poor adults selling their own kidneys for transplantation, though there appears to be no hard evidence of traffic in children's organs. The World Health Organization (WHO) has examined this issue, commenting: "The use of unrelated living donors raises the possibility of the poor especially in developing countries, where potential unrelated donors are subject to temptation to sell their organs ... While organ and tissue donation for altruism or love may be ethically acceptable, the donation for profit should be deprecated." (*Human Organ Transplantation: A report on developments under the auspices of the World Health Organization (1987-1991)*, WHO, Geneva, 1991) The WHO Guiding Principles on Human Organ Transplantation recommends that "no organ shall be removed from the body of a living minor for the purpose of transplantation. Exceptions may be made under national law in the case of regenerative tissue" (Principle 4). This exception would allow for transplants of bone marrow, but would preclude, for example, a child donating one of his kidneys or lungs to a sibling (although under Principle 3, adults are permitted to donate organs to genetically related recipients). Principle 5 prohibits commercial transactions in relation to organ transplants.

The Optional Protocol on the sale of children, child prostitution and child pornography specifically includes "Transfer of organs of the child for profit" as an act that the ratifying State must criminalize (article 3).

Victims, not criminals

When adopting or strengthening laws to penalize the trafficking of children, it is obviously important not to criminalize children themselves. They are the victims not the criminals. Similarly where children are trafficked, particularly when they find themselves in an unfamiliar country, it is important that first priority is given to treating them humanely. Article 39 of the Convention on the Rights of the Child requires States to take all appropriate measures to promote the recovery and social reintegration of child victims (page 589).

Both the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (adopted by the General Assembly in 2000) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (also adopted by the General Assembly in

2000) require States Parties to protect and assist the victims of sale and trafficking. The former Protocol requires the child's special needs to be recognized, giving such child victims full information, ensuring that their needs and views are considered and protecting their privacy and safety as well as providing them with specialist support for social reintegration and recovery. The latter Protocol reiterates these safeguards, and additionally requires that States receiving children who have been trafficked across borders should provide them with appropriate education, housing and care, and ensure that they will be safe if they are returned to their country of origin.

In its General Comment No. 6 on "Treatment of unaccompanied and separated children outside their country of origin", the Committee notes:

"Unaccompanied or separated children in a country outside their country of origin are particularly vulnerable to exploitation and abuse. Girls are at particular risk of being trafficked, including for purposes of sexual exploitation..."

"Trafficking of such a child, or 're-trafficking' in cases where a child was already a victim of trafficking, is one of many dangers faced by unaccompanied or separated children. Trafficking in children is a threat to the fulfilment of their right to life, survival and development (art. 6). In accordance with article 35 of the Convention, States Parties should take appropriate measures to prevent such trafficking. Necessary measures include identifying unaccompanied and separated children; regularly inquiring as to their whereabouts; and conducting information campaigns that are age appropriate, gender sensitive and in a language and medium that is understandable to the child. Adequate legislation should also be passed and effective mechanisms of enforcement established with respect to labour regulations and border crossing."

"Risks are also great for a child who has already been a victim of trafficking, resulting in the status of being unaccompanied or separated. Such children should not be penalized and should receive assistance as victims of a serious human rights violation. Some trafficked children may be eligible for refugee status under the 1951 Convention, and States should ensure that separated and unaccompanied trafficked children who wish to seek asylum or in relation to whom there is otherwise indication that international protection needs exist, have access to asylum procedures. Children who are at risk of being re-trafficked should not be returned to their country of origin unless it is in their best interests and appropriate measures for their protection have been taken. States should

consider complementary forms of protection for trafficked children when return is not in their best interests.” (Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, paras. 50, 52 and 53)

The Committee has encouraged both prevention and rehabilitation in this area, for example in its observations to Colombia:

“The Committee... is concerned over the high and rising number of children who are victims of sexual exploitation and trafficking, and over information indicating that they risk being criminalized. It further notes with concern the increased risk of sexual exploitation and trafficking faced by children of vulnerable groups, such as the internally displaced and children living in poverty. Furthermore, unequal law enforcement and lack of effective implementation of anti-trafficking measures in the State Party give cause for serious concern. “The Committee recommends that the State Party:

(a) undertake further in-depth studies on the sexual exploitation of children in order to assess its scope and root causes and enable effective monitoring and measures to prevent, combat and eliminate it;
(b) include adequate reference to child labour in the reformed Minor’s Code and implement a national plan of action against sexual exploitation and trafficking of children, taking into account the Declaration and Agenda for

Action and the Global Commitment adopted at the 1996 and 2001 World Congresses against Commercial Sexual Exploitation of Children;
(c) provide adequate programmes of assistance and reintegration for sexually exploited and/or trafficked children and in particular ensure that they are not criminalized;
(d) take the necessary and effective implementation of measures and ensures equal enforcement of the law to avoid impunity;
(e) train law enforcement officials, social workers and prosecutors on how to receive, monitor, investigate and prosecute cases, in a child-sensitive manner that respects the privacy of the victim;
(f) seek further technical assistance from among others, UNICEF and ILO-IPEC (International Programme for the Elimination of Child Labour).” (Colombia CRC/C/COL/CO/3, paras. 86 and 87)

In 2005 the United Nations Economic and Social Council adopted the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (resolution 2005/20). These Guidelines require child victims and witnesses to be given effective assistance, be treated with dignity and compassion, to be fully informed and to have their views taken into account, to have their safety and privacy protected and to be rehabilitated and, where possible, offered reparation.



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

Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 35, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 35 is relevant to **departments of justice, foreign affairs, home affairs, labour, education, social welfare and health**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 35 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 35 likely to include the training of **police, social workers, adoption agencies staff and health personnel**)?

• Specific issues in implementing article 35

- Have legal and administrative measures been adopted to ensure that children abducted within the jurisdiction are found as speedily as possible and returned?

Has the State ratified or acceded to:

- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000)?
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)?
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000)?
- ILO Worst Forms of Child Labour Convention (1999)?
- Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption (1993)?

How to use the checklist, see page XIX



- Hague Convention on Civil Aspects of International Child Abduction (1980)?
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)?
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)?

- Are all forms of the sale or trafficking of children illegal, including when perpetrated by parents?
- Have legal and administrative measures been adopted to ensure that children cannot be sold into any form of bonded labour?
- When bonded labour is being abolished, are measures taken to nullify any debts that have led to children entering such labour?
- Is the use of children for the purpose of begging an unlawful activity?
- Does the law prohibit any form of improper financial gain from intercountry adoption?
- Do all relevant state agencies, in particular the police and welfare services, cooperate internationally in identifying and tracing all forms of cross-border trafficking in children?
- Are measures taken to ensure that children who are victims of cross-border trafficking can return safely and lawfully to their country of origin?
- Is there a national data base of both missing children and known offenders in child trafficking?
- Are measures adopted to assist the prosecution of those engaged in child trafficking outside the jurisdiction?
- Does the law prohibit the sale of organs from any living child (save for regenerative tissue)?
- Is it unlawful to compulsorily conscript a child (under 18 years of age) into the armed services?
- Are child victims of abduction, sale or trafficking treated humanely as victims, not criminals, and provided with all appropriate forms of support and assistance?
- Are child victims of abduction, sale or trafficking treated humanely as victims, not criminals, and provided with all appropriate forms of support and assistance?
- Are children's views on the most appropriate measures for preventing their abduction, sale and traffic given due weight?



Reminder: The Convention is indivisible and its articles interdependent.
Article 35 should not be considered in isolation.

Particular regard should be paid to: The other general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground

Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children

Article 6: right to life and maximum possible survival and development

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

Closely related articles

Articles whose implementation is particularly related to that of article 35 include:

Article 8: preservation of child's identity

Article 11: protection from illicit transfer and non-return

Article 16: protection from arbitrary interference in privacy, family and home

Article 20: children without families

Article 21: adoption

Article 32: child labour

Article 33: drug abuse and trafficking

Article 34: sexual exploitation

Article 36: other forms of exploitation

Article 39: rehabilitative care

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Protection from other forms of exploitation

article

36



Text of Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

In drafting the Convention, article 36 was introduced to ensure that the “social” exploitation of children was recognized, along with their sexual and economic exploitation, though examples of what was meant by social exploitation were not provided. Articles 11 (illicit transfer and non-return of children), 21 (adoption), 32 (employment), 33 (drug trafficking), 34 (sexual exploitation), 35 (abduction, sale and trafficking) and 38 (armed conflict) address the many ways in which children are exploited by adults. Article 36

is thus a safety net protection to cover “all other forms of exploitation”.

The Committee has not as yet raised any specific concerns under this article. Forms of exploitation not addressed under other articles include the exploitation of gifted children, children used in criminal activities, the exploitation of children in political activities (for example in violent demonstrations), the exploitation of children by the media and the exploitation of children by researchers or for the purposes of medical or scientific experimentation. ■

Summary



Gifted children

Children with talents in competitive sports, games, performing arts and so forth can have these talents developed by families, the media, businesses and state authorities at the expense of their overall physical and mental development. Regulations relating to child labour often exclude “voluntary” activities such as these and therefore may not be monitored by child welfare agencies.

The media

As discussed in relation to articles 16 (page 203) and 17 (page 217), children can be exploited by the media, for example by identifying child victims or child offenders, or by securing performances by children without their informed consent which are potentially harmful to their development. The Committee commented, in relation to its Day of General Discussion on “The child and the media”:

“In their reporting, the media give an ‘image’ of the child; they reflect and influence perceptions about who children are and how they behave. This image could create and convey respect for young people; however, it could also spread prejudices and stereotypes which may have a negative influence on public opinion and politicians. Nuanced and well-informed reporting is to the benefit of the rights of the child.

“It is important that the media themselves do not abuse children. The integrity of the child should be protected in reporting about, for instance, involvement in criminal activities, sexual abuse and family problems. Fortunately, the media in some countries have voluntarily agreed to respect guidelines which offer such protection of the privacy of the child; however, such ethical standards are not always adhered to.” (Committee on the Rights of the Child, Report on the eleventh session, January 1996, CRC/C/50, p. 80)

Research and experimentation

Children can also be exploited by researchers or experimenters, for example by breaches of their privacy or by requiring them to undertake tasks that breach their rights or are disrespectful of their human dignity. Article 7 of the International Covenant on Civil and Political Rights expressly prohibits medical or scientific experimentation without free consent. As discussed under article 37 (page 547), the Human Rights Committee states in a General Comment that this was particularly important to anyone “not capable of giving a valid consent” or who was in any form of detention or imprisonment (Human Rights Committee, General Comment No. 20, 1992, HRI/GEN/1/

Rev.8, para. 7, p. 191). The Convention on the Rights of Persons with Disabilities, adopted in December 2006, also states that “no one shall be subjected without his or her free consent to medical or scientific experimentation” (article 15(1)).

The Convention on the Rights of the Child does not address this issue, although the question of the “free consent” of children to research or medical or social experimentation is even more problematic than that of adults. It would be wrong to outlaw all forms of experimentation on children, since some experimental forms of treatment may offer children their only hope of cure and it is argued that medical experimentation is a necessary part of medical progress. The Council for International Organizations of Medical Sciences has issued *International Ethical Guidelines for Biomedical Research Involving Human Subjects* which includes guidelines on when and how children may be the subject of research.

Where older children are involved, the issue also relates to their civil rights under the Convention, for example to be heard, to freedom of expression and of association, and to respect for their “evolving capacities”. It is reasonable to assume that children competent to determine medical treatment or surgery will also be competent to consent to participation in research or medical experimentation. States should ensure that all research and experimentation involving children conforms to a mandatory ethical code underpinned by statute. The Committee’s General Comment No. 3 on “HIV/AIDS and the rights of the child” calls on States to support research into this subject but cautions that *“... children do not serve as research subjects until an intervention has already been thoroughly tested on adults. Rights and ethical concerns have arisen in relation to HIV/AIDS biomedical research, HIV/AIDS operations, and social, cultural and behavioural research. Children have been subjected to unnecessary or inappropriately designed research with little or no voice to either refuse or consent to participation. In line with the child’s evolving capacities, consent of the child should be sought and consent may be sought from parents or guardians if necessary, but in all cases consent must be based on full disclosure of the risks and benefits of research to the child.” (Committee on the Rights of the Child, General Comment No. 3, 2003, CRC/GC/2003/3, para. 29)*

States should also take measures for the rehabilitation of children harmed by any of these “other” forms of exploitation, in accordance with article 39.

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

Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 36, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 36 is likely to involve **departments of health, social welfare, labour, media and education**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 36 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 36 likely to include the training of **media producers, employment officers, social workers, researchers, medical personnel and scientists**)?

• Specific issues in implementing article 36

- Are legal and administrative mechanisms in place to ensure that children are protected from all forms of exploitation?
- Are welfare agencies empowered to intervene when there is concern that children are undertaking activities, for whatever reason, which impair their overall physical, mental, emotional, spiritual, moral and social development?
- Do measures prevent the exploitation of children by the media?
- Do measures prevent the use of children for all forms of research, including medical or scientific experimentation, unless appropriate consents have been obtained from the child and/or child's parents or legal guardians?
- Is all research and experimentation involving children regulated by a mandatory code of ethical practice?
- Are measures taken to provide rehabilitative services for children who have suffered from any form of exploitation covered by this article?



Reminder: The Convention is indivisible and its articles interdependent.
Article 36 should not be considered in isolation.

Particular regard should be paid to: The other general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground

Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children

Article 6: right to life and maximum possible survival and development

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

Closely related articles

Articles whose implementation is particularly related to that of article 36 include:

Article 16: protection from arbitrary interference in privacy, family and home

Article 17: responsibilities of the media

Article 32: child labour

Article 34: sexual exploitation of children

Article 35: abduction, sale and trafficking of children

Article 39: rehabilitative care

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Torture, degrading treatment and deprivation of liberty

article

37

Text of Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 37 of the Convention on the Rights of the Child provides the child with the right to be protected from

- torture;
- other cruel, inhuman or degrading treatment or punishment;
- capital punishment;
- life imprisonment without possibility of release;

- unlawful or arbitrary deprivation of liberty.

The article sets out conditions for any arrest, detention or imprisonment of the child, which shall be

- in conformity with the law;
- used only as a measure of last resort; and
- for the shortest possible time.

Summary



And the article sets out further conditions for the treatment of any child deprived of liberty:

- to be treated with humanity and respect for the inherent dignity of the human person;
- in a manner which takes into account the needs of persons of his or her age;
- to be separated from adults unless it is considered in the child's best interest not to do so;
- to maintain contact with his or her family, through correspondence and visits, save in exceptional circumstances;
- to have the right to prompt access to legal and other appropriate assistance;
- to have the right to challenge the legality of the deprivation of liberty before a court or other competent, independent and impartial authority;
- to have the right to a prompt decision on such action.

The Committee continues to advocate comprehensive reform of the juvenile justice system to most States whose reports it examines, citing articles 37, 39 and 40 and the United Nations rules and guidelines on juvenile justice. In 2007 it adopted General Comment No. 10 on "Children's rights in Juvenile Justice" (CRC/C/GC/10).

The provisions in article 37 on protection from torture and cruel, inhuman or degrading treatment or punishment are absolute provisions, requiring the State to protect children wherever they are. The provisions relating to the restriction of liberty do not just cover children in trouble with the law (in many States restriction of the liberty of children is permitted for reasons not related to criminal offences – "welfare", mental health and in relation to asylum seeking and immigration). Article 39 provides an obligation to promote the recovery and reintegration of child victims of torture and other cruel, inhuman or degrading treatment or punishment (see page 589). ■

United Nations rules and guidelines on juvenile justice

The Committee, in its examination of States Parties' reports and in other comments, has indicated that it regards the United Nations rules and guidelines relating to juvenile justice as providing relevant detailed standards for the implementation of article 37 (the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the "Beijing Rules" (referred to in the Preamble to the Convention); the United Nations Rules for the Protection of Juveniles

Deprived of their Liberty; and the United Nations Guidelines for the Prevention of Juvenile Delinquency, the Riyadh Guidelines).

The Committee has also referred to the Guidelines for Action on Children in the Criminal Justice System, prepared at an expert group meeting in Vienna in February 1997 (Economic and Social Council resolution 1997/30, Annex) and more recently to the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, 10 June 2005).

"No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment"

Paragraph (a) of article 37 emphasizes that the absolute prohibition on torture, and cruel, inhuman or degrading treatment or punishment, upheld for everyone in the Universal Declaration of Human Rights (article 5) and the International Covenant on Civil and Political Rights (article 7), and also in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, applies equally to children. And it should be underlined that this prohibition applies to all children wherever they are.

The Committee on the Rights of the Child requires article 37(a) of the Convention on the Rights of the Child to be reflected in national legislation as applying to children. The Committee noted to Costa Rica, for example:

"Although the Committee is aware that the State Party's domestic legislation has included the right of the child to physical integrity (Children and Adolescents Code, art. 24) and that no cases of torture of children have been reported in the State Party, concern is expressed at the lack of explicit legislation prohibiting the use of torture and that no sanction is provided in the legislation for those responsible for torture. In the light of article 37(a), the Committee recommends that the State Party include a provision in its domestic legislation prohibiting children from being subjected to torture and establishing appropriate sanctions against the perpetrators of torture." (Costa Rica CRC/C/15/Add.117, para. 18)

It followed this up when it examined Costa Rica's Third Report:

"While taking note that a bill prohibiting and penalizing torture is being examined by the Legislative Assembly, the Committee is concerned at the fact that the use of torture, in particular on children, is still not

formally prohibited and criminalized in the Penal Code. "The Committee reiterates its recommendation that the State Party take all necessary measures to ensure the prohibition and penalization of torture in its legislation." (Costa Rica CRC/C/15/Add.266, paras. 29 and 30)

The Committee proposes accession to the Convention against Torture and refers on occasion to observations of the Committee against Torture. The Committee has expressed grave concern at reports of torture and other inhuman or degrading treatment and punishment, in some cases in the context of armed conflict. For example:

"The Committee expresses its grave concern over the reported massive occurrence of torture and other cruel, inhuman or degrading treatment or punishment, including amputations and mutilations, committed against children.

"Recognizing that the majority of these acts were committed in the context of the armed conflict, and with a view to achieving reconciliation and prevention, the Committee urges the State Party to use the truth and reconciliation Commission process to raise discussion on such acts. The Committee, in addition, urges the State Party to undertake measures which will ensure that such acts will, in the future, receive an appropriate response through the judicial process." (Sierra Leone CRC/C/15/Add.116, paras. 44 and 45)

"The Committee is seriously concerned that children continue to be victims of torture, cruel and degrading treatment. The Committee notes that although members of illegal armed groups bear primary responsibility, state agents including members of the military are also implicated. The Committee is especially concerned over the situation in rural areas where children are at risk as a consequence of the ongoing internal armed conflict. In particular, the Committee expresses concern regarding the increasing number of girls who are subjected to sexual violence and is disturbed by numerous reports of rapes committed by members of the military. The Committee is also concerned about other forms of torture and cruel, inhuman and degrading treatment by law enforcement officials, including in detention facilities, and also over abuses in institutional care.

"The Committee urges the State Party to take effective measures to protect children from torture and other cruel, inhuman or degrading treatment. The Committee emphasizes the urgent need to investigate and sanction all reported cases, committed by the military, law enforcement officials or any person acting in an official capacity, in order to break the pervasive cycle of impunity of serious human rights violations. The

Committee recommends that the State Party ensures that all child victims of torture, cruel and degrading treatment are provided access to physical and psychological recovery and social reintegration as well as compensation, giving due consideration to the obligations enshrined in articles 38 and 39 of the Convention." (Colombia CRC/C/COL/CO/3, paras. 50 and 51)

"The Committee notes that the Constitution of the Philippines prohibits torture and that the provisions of the Child and Youth Welfare Code... provide protection for children against torture and ill-treatment and that all hospitals, clinics, related institutions and private physicians are obliged to report in writing all cases of torture and ill-treatment of children. Nevertheless, the Committee is deeply concerned at a number of reported cases of torture, inhuman and degrading treatment of children, particularly for children in detention. The Committee reiterates its previous recommendation on prohibiting and criminalizing torture by law and it is of the view that existing legislation does not provide children with an adequate level of protection against torture and ill-treatment.

"... the Committee urges the State Party to review its legislation in order to provide children with better protection against torture and ill-treatment in the home and in all public and private institutions and to criminalize torture by law. The Committee recommends that the State Party investigate and prosecute all cases of torture and ill-treatment of children, ensuring that the abused child is not victimized in legal proceedings and that his/her privacy is protected. The State Party should ensure that child victims are provided with appropriate services for care, recovery and reintegration..." (Philippines CRC/C/15/Add.259, paras. 38 and 39)

"... the Committee is deeply concerned at the numerous reports of torture and ill-treatment of persons under the age of 18 years, and the reportedly insufficient efforts by the State Party to investigate allegations of torture and prosecute the alleged perpetrators. The Committee is also concerned at the definition of torture in the State Party's Criminal Code, which seems to allow for various interpretations by the judiciary and the law enforcement authorities.

"The Committee urges the State Party:
(a) To amend the relevant provisions of its Criminal Code in order to ensure a consistent interpretation of the definition of torture by the judiciary and the law enforcement authorities, as recommended by the Committee against Torture and the Human Rights Committee in 2002 and 2005, respectively (CAT/C/CR/28/7 and CCPR/CO/83/UZB);





(b) To undertake systematic training programmes at the national and local level, addressed to all professionals working with and for children ..., and the Mahalla Committees, on prevention of and protection against torture and other forms of ill-treatment;

(c) To investigate the allegations of torture and ill-treatment of persons under 18, and take all measures to bring the alleged perpetrators to justice;

(d) To implement the National Plan of Action for the implementation of the Convention against Torture and pay particular attention to measures related to children.” (Uzbekistan CRC/C/UZB/CO/2, paras. 36 and 37)

The Committee has also expressed concern at allegations of torture and inhuman or degrading treatment of children in detention and on the streets, by police, security forces, teachers and within the family. The Committee has proposed formal investigations of any allegations of torture and that perpetrators should be brought to trial (by civilian courts) and if found guilty, punished.

The Committee has made it clear that any statements made as a result of torture or other cruel, inhuman or degrading treatment cannot be accepted as evidence (General Comment No. 10 on “Children’s rights in Juvenile Justice”, para. 23h). For example, it proposed that Turkmenistan should

“... Ensure that any statement which is established to have been made as a result of violence and or coercion would be qualified by law as inadmissible evidence in any proceedings;...” (Turkmenistan CRC/C/TKM/CO/1, para. 70(d))

Other international instruments

In 1975, the General Assembly adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX), 9 December 1975, Annex). The provisions of the Declaration formed the basis for the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by General Assembly resolution 39/46, 10 December 1984). It defines torture, for its purposes, as meaning “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimi-

nation of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” (Article 1)

The Convention established the Committee against Torture, which oversees implementation of the Convention, and seeks to resolve cases of alleged torture (and other cruel, inhuman or degrading treatment) brought to its notice. In 2002 the United Nations General Assembly adopted the Optional Protocol to the Convention, which came into force in June 2006; its objective is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. The Optional Protocol creates a Subcommittee on Prevention and allows in-country inspections of places of detention to be undertaken in collaboration with national institutions. Under article 3 of the Protocol, each State Party is required to set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture, etc., known in the Protocol as the national preventive mechanism (for further information see www.ohchr.org).

In addition, the Commission on Human Rights – now Human Rights Council – appointed a Special Rapporteur on Torture in 1985. The mandate includes: transmitting urgent appeals to States about individuals reported to be at risk of torture, as well as communications on past alleged cases of torture; undertaking fact-finding country visits; and submitting annual reports on activities, the mandate and methods of work to the Human Rights Council and the General Assembly.

The Human Rights Committee has adopted two General Comments on article 7 of the International Covenant on Civil and Political Rights (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”): first in 1982 (Human Rights Committee, General Comment No. 7, 1982, HRI/GEN/1/Rev.8, pp. 168 and 169) and then, in 1992, a further Comment that “replaces General Comment No. 7, reflecting and further developing it”. In it, the Committee emphasizes: “The aim of the provisions of article 7 ... is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the

State Party to afford everyone protection through legislative and other measures as may be necessary, against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity... The text of article 7 allows of no limitation. The Committee also reaffirms that, even in situations of public emergency... no derogation from the provisions of article 7 is allowed and its provisions must remain in force. The Committee likewise observes that no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority.” (The Geneva Conventions and Additional Protocols include provisions on restriction of liberty of persons affected by armed conflict, but do not of course undermine the fundamental principles of human rights, see article 38, page 575.)

The Human Rights Committee notes that the Covenant does not contain any definition of the concepts covered by article 7, “nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied...” The Committee has also noted that “it is not sufficient for the implementation of article 7 to prohibit such treatment or punishment or to make it a crime. States Parties should inform the Committee of the legislative, administrative, judicial and other measures they take to prevent and punish acts of torture and cruel, inhuman and degrading treatment in any territory under their jurisdiction.” In addition, “In the view of the Committee, States Parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or *refoulement* [forced return of asylum seekers]. States Parties should indicate in their reports what measures they have adopted to that end.” (Human Rights Committee, General Comment No. 20, 1992, HRI/GEN/1/Rev.8, pp. 190 and 191)

As quoted above, article 7 of the International Covenant on Civil and Political Rights has an additional provision, not repeated in article 37, which expressly prohibits medical or scientific experimentation without free consent, and the Human Rights Committee in its General Comment notes that reports of States Parties generally give little information on this point: “More attention should be given to the need and means to ensure observance of this provi-

sion. The Committee also observes that special protection in regard to such experiments is necessary in the case of persons not capable of giving valid consent, and in particular those under any form of detention or imprisonment. Such persons should not be subjected to any medical or scientific experimentation that may be detrimental to their health.” (Human Rights Committee, General Comment No. 20, 1992, HRI/GEN/1/Rev.8, pp. 190 and 191) There is no equivalent provision relating to children in the Convention on the Rights of the Child, but article 36 protects the child from “all other forms of exploitation prejudicial to any aspects of the child’s welfare” (page 543).

In its General Comment No. 3 on “HIV/AIDS and the rights of the child”, the Committee on the Rights of the Child states:

“Children have been subjected to unnecessary or inappropriately designed research with little or no voice to either refuse or consent to participation. In line with the child’s evolving capacities, consent of the child should be sought and consent may be sought from parents or guardians if necessary, but in all cases consent must be based on full disclosure of the risks and benefits of research to the child. States Parties must make every effort to ensure that children and, according to their evolving capacities, their parents and/or their guardians participate in decisions on research priorities and that a supportive environment is created for children who participate in such research.” (General Comment No. 3, 2003, CRC/GC/2003/3, para. 29)

The Convention on the Rights of Persons with Disabilities, adopted in December 2006, repeats the Covenant’s provision in article 15: “1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

“2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.”

Enforced disappearance

In 1993, the General Assembly adopted a Declaration on the Protection of All Persons from Enforced Disappearance (A/RES/47/133), noting that any act of enforced disappearance is an offence against human dignity and constitutes a violation of the rules of international law, including “the right not to be subjected to torture and





other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life” (article 1). Article 20 of the Declaration covers the prevention of the abduction of children of parents subjected to enforced disappearance and of children born during their mother’s enforced disappearance.

In December 2006, the United Nations General Assembly adopted the International Convention for the Protection of All Persons from Enforced Disappearance, which recognizes the right of persons not to be subjected to enforced disappearance, regardless of circumstances, and the right of victims to justice and reparation. Once in force, it will commit States Parties to it to criminalize enforced disappearance, to bring those responsible to justice and to take preventive measures. It affirms the right of any victim to know the truth about the circumstances of an enforced disappearance, and the fate of the disappeared person, and the right to freedom to seek, receive and impart information to this end. The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law. Article 25 of the Convention includes special provisions relating to children who are subject to enforced disappearance, or whose parents or legal guardians are:

“1. Each State Party shall take the necessary measures to prevent and punish under its criminal law:

(a) The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance;

(b) The falsification, concealment or destruction of documents attesting to the true identity of the children referred to in subparagraph (a) above.

2. Each State Party shall take the necessary measures to search for and identify the children referred to in paragraph 1(a) of this article and to return them to their families of origin, in accordance with legal procedures and applicable international agreements.

3. States Parties shall assist one another in searching for, identifying and locating the children referred to in paragraph 1(a) of this article.

4. Given the need to protect the best interests of the children referred to in paragraph 1(a) of this article and their right to preserve, or to have re-established, their identity, including their nationality, name and family relations as recognized by

law, States Parties which recognize a system of adoption or other form of placement of children shall have legal procedures in place to review the adoption or placement procedure, and, where appropriate, to annul any adoption or placement of children that originated in an enforced disappearance.

5. In all cases, and in particular in all matters relating to this article, the best interests of the child shall be a primary consideration, and a child who is capable of forming his or her own views shall have the right to express those views freely, the views of the child being given due weight in accordance with the age and maturity of the child.” (See also article 8, page 113, and article 9, page 121.)

Forms of inhuman or degrading punishment

The Committee on the Rights of the Child notes in its Concluding Observations on States Parties’ reports and in other comments that any corporal punishment of children, however light, is incompatible with the Convention on the Rights of the Child, citing, in particular, article 19, which requires protection of children “from all forms of physical or mental violence”, and in relation to school discipline, article 28(2), in addition to article 37.

In 2006, it adopted General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28.2 and 37, *inter alia*)”. The Committee states it is issuing the General Comment

“... to highlight the obligation of all States Parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children and to outline the legislative and other awareness-raising and educational measures that States must take.”

It notes that:

“Before the adoption of the Convention on the Rights of the Child, the International Bill of Human Rights – the Universal Declaration and the two International Covenants, on Civil and Political Rights and on Economic, Social and Cultural Rights – upheld ‘everyone’s’ right to respect for his/her human dignity and physical integrity and to equal protection under the law. In asserting States’ obligation to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment, the Committee notes that the Convention on the Rights of the Child builds on this foundation. The dignity of each and every individual is the fundamental guiding principle of international human rights law...”

“Article 37 of the Convention requires States to ensure that ‘no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment’. This is complemented and extended by article 19, which requires States to ‘take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child’. There is no ambiguity: ‘all forms of physical or mental violence’ does not leave room for any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them.” (Committee on the Rights of the Child, General Comment No. 8, 2006, CRC/C/GC/8, paras. 2, 16 and 18. For summary and further discussion, see article 19, page 262. For full text of General Comment see: www.ohchr.org/english/bodies/crc/comments.htm.)

The Committee has in particular criticized legal provisions in States Parties that attempt to draw a line between acceptable and unacceptable forms of corporal punishment. In many Concluding Observations on States Parties’ reports, the Committee has called for a clear prohibition of all corporal punishment – in the family, in other forms of care, in schools and in the penal system (see article 19, page 264).

The Committee’s examination of States Parties’ reports has found that amputation and stoning as well as corporal punishment in the form of flogging and whipping persist for juveniles in some countries as a sentence of the courts. This raises an issue under article 37 as well as article 19, and conflicts with the United Nations rules and guidelines relating to juvenile justice, which the Committee has consistently promoted as providing relevant standards:

- the “Beijing Rules”: rule 17.3 (Guiding Principles in Adjudication and Disposition) states that “Juveniles shall not be subject to corporal punishment”.
- the United Nations Rules for the Protection of Juveniles Deprived of their Liberty: rule 67 states that “all disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment...”
- the Riyadh Guidelines: para. 21(h) states that education systems should devote particular attention to “avoidance of harsh disciplinary

measures, particularly corporal punishment”; para. 54 says that “No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions”.

In its General Comment No. 10 on “Children’s rights in Juvenile Justice”, the Committee reiterates the prohibition of corporal punishment and all other cruel or degrading forms of punishment, both as a sentence and as a punishment within institutions (CRC/C/GC/10).

Examples of the Committee’s comments follow:

“In the light of article 37(a) of the Convention, the Committee is seriously concerned that persons who committed crimes while under 18 can be subjected to corporal punishment under Note 2 of article 49 of the Islamic Penal Law, or can be subjected to a variety of types of cruel, inhuman or degrading treatment and punishment such as amputation, flogging and stoning, which are systematically imposed by judicial authorities. Concurring with the Human Rights Committee (CCPR/C/79/Add.25), the Committee finds that application of such measures is incompatible with the Convention. “The Committee recommends that the State Party take all necessary steps to end the imposition of corporal punishment under Note 2 of article 49 of the Islamic Penal Law and the imposition of amputation, flogging, stoning and other forms of cruel, inhuman or degrading treatment and punishment to persons who may have committed crimes while under 18.” (Islamic Republic of Iran CRC/C/15/Add.123, paras. 37 and 38)

When it examined Iran’s Second Report it re-emphasized its recommendation:

“The Committee deeply regrets that, under the existing laws, persons below the age of 18 who have committed a crime can be subjected to corporal punishment and can be sentenced to a variety of various types of torture, or other cruel, inhuman or degrading treatment and or punishment, such as amputation, flogging or stoning, which are systematically imposed by judicial authorities, and which the Committee considers to be totally incompatible with article 37(a) and other provisions of the Convention. “In the light of the consideration of the Bill on the Establishment of Juvenile Courts, the Committee urges the State Party to take all the necessary measures to ensure that persons who committed crimes while under 18 are not subjected to any form of corporal punishment and to immediately suspend the imposition and the execution of sentences of amputation, flogging, stoning and other forms of cruel, inhuman or degrading treatment and or punishments.” (Islamic Republic of Iran CRC/C/15/Add.254, paras. 45 and 46)





And it told Singapore to

“Prohibit the use of corporal punishment, including whipping and caning, and solitary confinement in all detention institutions for juvenile offenders, including police stations;...” (Singapore CRC/C/15/Add.220, para. 45(d))

In his 2005 report to the United Nations General Assembly, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment reviewed the relevant jurisprudence of international and regional human rights mechanisms on corporal punishment. He concluded: “On the basis of the review of jurisprudence of international and regional human rights mechanisms, the Special Rapporteur concludes that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Moreover, States cannot invoke provisions of domestic law to justify the violation of their human rights obligations under international law, including the prohibition of corporal punishment. He therefore calls upon States to abolish all forms of judicial and administrative corporal punishment without delay.” (A/60/316, paras. 18 to 28)

The United Nations Secretary-General’s Study on Violence Against Children, which reported to the General Assembly in October 2006, urges States to move quickly to prohibit all forms of violence against children, including all corporal punishment, harmful traditional practices, sexual violence, torture and other cruel, inhuman or degrading treatment or punishment, setting a target date of 2009. The Report notes: “Currently, at least 31 countries permit corporal punishment in sentencing children for crimes, which in some countries may include caning, flogging, stoning or amputation.” (Report of the independent expert for the United Nations study on violence against children, United Nations, General Assembly, sixty-first session, August 2006, A/61/299, para. 60)

The complementary *World Report on Violence against Children* notes: “The first purpose of clear prohibition of violence is educational – to send a clear message across societies that all violence against children is unacceptable and unlawful, to reinforce positive, non-violent social norms. There should be no impunity for those who perpetrate violence against children, but care must be taken to ensure that child victims do not suffer further through insensitive enforcement of the law...” (Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006, pp. 18 and 19). For summary of recommendations and discussion, see article 19, page 251.

Solitary confinement or isolation of children

Placing a child in isolation or solitary confinement raises a further issue under article 37(a) of the Convention, in addition to the issues relating to the restriction of liberty. In its General Comment No. 10 on “Children’s rights in Juvenile Justice”, the Committee states that placement in a dark cell, closed or solitary confinement or any other punishment or treatment that may compromise the physical or mental health or well-being of the child concerned must be strictly prohibited (CRC/C/GC/10).

The Committee has expressed concern to a number of States about use of solitary confinement, telling Denmark, for example, to

“... (a) Review as a matter of priority the current practice of solitary confinement, limit the use of this measure to very exceptional cases, reduce the period for which it is allowed and seek its eventual abolition; (b) Take measures to abolish the practice of imprisoning or confining in institutions persons under 18 who display difficult behaviour;...” (Denmark CRC/C/DNK/CO/3, para. 59)

“Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age”

Article 37(a) of the Convention on the Rights of the Child prohibits the death penalty for offences committed by persons below 18; article 6, providing all children with the right to life and maximum survival and development, has the same effect. The Committee reiterates this in its General Comment No. 10 on “Children’s rights in Juvenile Justice” (CRC/C/GC/10).

As noted under article 6 (page 89) the International Covenant on Civil and Political Rights also states (in its article 6): “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.” (Para. 5) (A Second Optional Protocol to the Covenant, adopted by the General Assembly in 1989, aims at abolition of the death penalty: under its article 1, no one within the jurisdiction of a State Party to the Protocol may be executed.)

The Special Rapporteur on extrajudicial, summary or arbitrary executions focuses on restrictions on the use of the death penalty, including its prohibition for juvenile offenders. In her 2001 report, the Special Rapporteur reported that,

during the period under review, executions of children under the age of 18 at the time of the crime were reported to have occurred in Afghanistan, the Democratic Republic of the Congo, the Islamic Republic of Iran and the United States of America (E/CN.4/2001/9, paras. 79, 80 and 91).

The Committee has raised the issue with a number of States Parties. For example:

"In the light of articles 6 and 37(a) of the Convention, the Committee is seriously disturbed at the applicability of the death penalty for crimes committed by persons under 18 and emphasizes that such a penalty is incompatible with the Convention.

"The Committee strongly recommends that the State Party take immediate steps to halt and abolish by law the imposition of the death penalty for crimes committed by persons under 18." (Islamic Republic of Iran CRC/C/15/Add.123, paras. 29 and 30)

When it examined Iran's Second Report, it urged the State

"... to suspend immediately, for an unlimited period of time, the imposition and execution of the death penalty for crimes committed by persons under 18..." (Islamic Republic of Iran CRC/C/15/Add.254, para. 73)

It has emphasized that prohibition of the death penalty must be confirmed in legislation, with no exceptions, telling Burkina Faso that it was

"... deeply concerned at the possibility that children of 16 and 17 years of age are treated like adults and can be subjected to the death penalty or life imprisonment, which is a serious violation of article 37 of the Convention;..." (Burkina Faso CRC/C/15/Add.193, para. 60)

"The Committee takes note of the information that no child is sentenced to death and that capital punishment is not passed to persons who commit a crime before they reach the age of majority (in general 18 years). Nevertheless, it is deeply concerned that judges have the discretionary power which is often exercised when presiding over criminal cases involving children, to decide that a child has reached the age of majority at an earlier age, and that as a consequence capital punishment is imposed for offences committed by persons before they have reached the age of 18. The Committee is deeply alarmed that this is a serious violation of the fundamental rights under article 37 of the Convention.

"The Committee urges the State Party to take the necessary steps to immediately suspend the execution of all death penalties imposed on persons for having committed a crime before the age of 18, to take the appropriate legal measures to convert them into penalties in conformity with the provisions of the Convention and to abolish as a matter of

the highest priority the death penalty as a sentence imposed on persons for having committed crimes before the age of 18, as required by article 37 of the Convention." (Saudi Arabia CRC/C/ISAU/CO/2, paras. 32 and 33)

Paragraph (a) of article 37 also prohibits sentences of life imprisonment without possibility of release for offences committed before the age of 18, and it should be noted here that paragraph (b) requires that any detention or imprisonment must be used "only as a measure of last resort and for the shortest appropriate period". The Committee has expressed concern at "indeterminate sentences" as well as sentences of life imprisonment without the possibility of release, and in its General Comment No. 10 on "Children's rights in Juvenile Justice" it strongly recommends that States should prohibit "all forms of life imprisonment for offences committed by persons under the age of 18" (CRC/C/GC/10, para. 27).

The Committee has sometimes found both capital punishment and life imprisonment without possibility of release in a State's juvenile justice system. For example:

"The Committee remains concerned that national legislation appears to allow children between the ages of 16 and 18 to be sentenced to death with a two-year suspension of execution. It is the opinion of the Committee that the imposition of suspended death sentences on children constitutes cruel, inhuman or degrading treatment or punishment. It is the Committee's view that the aforementioned provisions of national law are incompatible with the principles and provisions of the Convention, notably those of its article 37(a)." (China CRC/C/15/Add.56, para. 21)

When it examined China's Second Report, the Committee welcomed the abolition of the death penalty in mainland China for persons who have committed an offence under the age of 18:

"However, it is concerned that life imprisonment continues to be possible for those under 18, even if that sentence is not often applied..."

The Committee went on to recommend that, within mainland China, the State should:

*"... (a) Abolish life sentences for persons who have committed offences when under the age of 18;
(b) Amend legislation so as to ensure that all children deprived of their liberty, including in work study schools, have the right to prompt access to legal and other appropriate assistance and the right to challenge the legality of their deprivation of liberty before*



a court or other competent, independent and impartial authority in a timely manner;...”
(China CRC/C/CHN/CO/2, paras. 89 and 93)

Extrajudicial executions

The Committee has expressed concern at “extrajudicial executions”:

“The Committee recommends that investigations be conducted into cases of extrajudicial executions, disappearance and torture which are carried out in the context of the internal violence prevailing in several parts of the country...” (Peru CRC/C/15/Add.8, para. 16)

A 1989 resolution of the United Nations Economic and Social Council proposes Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (resolution 1989/65, 24 May 1989).

The Special Rapporteur on extrajudicial, summary or arbitrary executions considers that honour crimes fall under the mandate. The Rapporteur’s 2001 report to the Commission on Human Rights states that “the Special Rapporteur does not take up all cases of such killings, but has limited herself to act where the State either approves of or supports these acts, or extends impunity to the perpetrators by giving tacit support to the practice” (E/CN.4/2001/9, para. 41). The General Assembly at its fifty-fifth session adopted resolution 55/66 entitled “Working towards the elimination of crimes against women committed in the name of honour”. For further discussion and Committee comments, see article 6, page 91.

“No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”

Article 37(b) of the Convention requires that any restriction of liberty of children, whether part of the juvenile justice system or otherwise, must not be arbitrary and must be authorized in legislation. The wording of paragraph (b), strongly reflected in the relevant United Nations rules and guidelines, emphasizes that restriction of liberty for under-18-year-olds should be exceptional – a last resort and always “for the shortest appropriate time”. The Committee reiterates this in its General Comment No. 10 on “Children’s rights in Juvenile Justice”.

In its General Comment and in recommendations to individual States, the Committee highlights the

need for a range of alternatives – diversions – to avoid restriction of liberty. For example, it recommended Canada, Benin, Latvia and Oman:

“... To take the necessary measures (e.g. non-custodial alternatives and conditional release) to reduce considerably the number of children in detention and ensure that detention is only used as a measure of last resort and for the shortest possible period of time, and that children are always separated from adults in detention.” (Canada CRC/C/15/Add.215, para. 57(d))

“... Implement alternative measures to deprivation of liberty, such as probation, community service or suspended sentences, in order to ensure that persons below 18 are deprived of liberty only as a last resort and for the shortest appropriate period of time;...” (Benin CRC/C/BEN/CO/2, para. 76(d))

“... Develop and implement alternatives to deprivation of liberty, including probation, mediation, community service or suspended sentences, and measures to effectively prevent and address drug- and/or alcohol-related delinquency.” (Latvia CRC/C/LVA/CO/2, para. 62(d))

“... Continue to develop and implement a comprehensive system of alternative measures to deprivation of liberty, such as probation, community service orders and suspended sentences, in order to ensure that deprivation of liberty is used only as a measure of last resort; Take the necessary measures, for example suspended sentencing and early release, to ensure that deprivation of liberty is limited to the shortest time possible;...” (Oman CRC/C/OMN/CO/2, para. 68(c) and (d))

The Committee congratulated El Salvador on the establishment of a separate system of juvenile justice under the Juvenile Offenders Act of 1994, applicable to children below the age 18 and noted the positive provision

“... that juvenile courts are required to review the sentences imposed on minors every three months with a view to ensuring that the circumstances in which the sentence is being served are not affecting the process of reintegration of the child into society. The Committee is, however, concerned that the law is not adequately implemented in practice.” (El Salvador CRC/C/15/Add.232, para. 65)

In addition, in relation to the juvenile justice system, article 40 emphasizes the overall aim of promoting the child’s sense of dignity and worth and his or her reintegration, and the particular desirability of avoiding, when appropriate, resorting to judicial proceedings and of promoting alternatives to institutional care (see page 618).



The “Beijing Rules” in rule 17 sets detailed “Guiding principles in adjudication and disposition”:

“(b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum.

(c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response.

(d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case...”

In relation to deprivation of liberty by official or public bodies, the Committee has adopted the definition of restriction of liberty in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty: “The deprivation of liberty means any form of detention or imprisonment or the placement of a person in another public or private custodial setting from which this person is not permitted to leave at will by order of any judicial, administrative or other public authority” (see original *Guidelines for Periodic Reports*, para. 137, note).

Paragraph (1) of article 9 of the International Covenant on Civil and Political Rights states: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.” In a General Comment, the Human Rights Committee points out “that paragraph 1 is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc.” (Human Rights Committee, General Comment No. 8, 1982, HRI/GEN/1/Rev.8, para. 1, p. 169)

During its examination of States Parties’ reports, the Committee on the Rights of the Child has found there are various routes, in various systems, to children’s liberty being restricted, in welfare, health, and immigration as well as penal systems.

“Arrest”, “detention” and “imprisonment” have been defined in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment: “arrest” is the act of “apprehending a person for the alleged commission of an offence”; “detention” is any deprivation of liberty, except as the result of a conviction for

an offence; and “imprisonment” refers to deprivation of liberty arising from a conviction.

The United Nations General Assembly resolution adopting the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (resolution 45/113, 14 December 1990, and Annex) notes that “juveniles deprived of their liberty are highly vulnerable to abuse, victimization and the violation of their rights”, and affirms that “the placement of a juvenile in an institution should always be a disposition of last resort and for the minimum necessary period”. Rule 2 states that “Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.”

The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) were adopted in 1990 to provide a set of basic principles to promote the use of non-custodial measures generally, as well as minimum safeguards for persons subject to alternatives to imprisonment. The Rules notes that there should be no discrimination in their application on grounds of age (rule 2.2).

The Committee on the Rights of the Child has expressed concern at the use of the restriction of liberty for young children and has emphasized that a minimum age for any restriction of liberty should be defined in legislation. The Committee has expressed concern at the length of restriction of liberty of children on arrest and during investigation (pre-trial detention), as well as the length of sentences, both generally and in specific circumstances. It should be noted that article 37(d) provides the right to challenge the legality of any deprivation of liberty before a court or other appropriate body “and to a prompt decision on any such action”. General Comment No. 10 on “Children’s rights in Juvenile Justice” states that every child arrested and deprived of his/her liberty should be brought before a competent authority to examine the legality of the restriction of liberty within 24 hours, and that the legality should be reviewed regularly, preferably every two weeks (CRC/C/GC/10, para. 28b).

The Committee has noted the importance of registering all children deprived of their liberty, and the *Guidelines for Periodic Reports (Revised 2005)* asks for detailed disaggregated data in respect of the:

(a) Number of persons under 18 held in police stations or pre-trial detention after having





been accused of committing a crime reported to the police, and the average length of their detention;

- (b) Number of institutions specifically for persons under 18 alleged as, accused of, or recognized as having infringed the penal law;
- (c) Number of persons under 18 in these institutions and average length of stay;
- (d) Number of persons under 18 detained in institutions that are not specifically for children;
- (e) Number and percentage of persons under 18 who have been found guilty of an offence by a court and have been sentenced to detention and the average length of their detention;
- (f) Number of reported cases of abuse and maltreatment of persons under 18 occurring during their arrest and detention/imprisonment.” (CRC/C/58/Rev.1, Annex, para. 24)

The Report of the United Nations Secretary-General’s Study on Violence Against Children notes that “In particular, little data are available about violence within care and detention institutions in most parts of the world because, although incidents may be documented, most institutions are not required to register and disclose this information – even to the parents of the children concerned.” (Report of the independent expert for the United Nations study on violence against children, United Nations, General Assembly, sixty-first session, August 2006, A/61/299, para. 27)

Arrest, pre-trial detention

The Committee on the Rights of the Child has frequently expressed concern at the length of pre-trial detention permitted in States Parties. In its General Comment No. 10 on “Children’s rights in Juvenile Justice”, the Committee emphasizes that an effective package of alternatives to pre-trial detention must be available. Use of pre-trial detention as a form of punishment violates the presumption of innocence. The duration of pre-trial detention should be limited in law and subject to regular review. For example, the Committee recommended to Mongolia and Latvia:

“... the State Party should in particular:... Limit by law the length of pre-trial detention of persons below 18 so that it is truly a measure of last resort for the shortest period of time, and ensure that it is decided by a judge as soon as possible and consequently reviewed;...” (Mongolia CRC/C/15/Add.264, para. 68(b))

“... The Committee also recommends that the State Party undertake more specific measures in order to:

(a) Ensure that juveniles in detention and pre-trial detention have access to legal aid and independent and effective complaints mechanisms, and have the opportunity to remain in regular contact with their families;
(b) Provide educational instruction for juveniles in detention and pre-trial detention, and significantly improve the living conditions in these facilities;
(c) Ensure that deprivation of liberty, including pre-trial detention, is used as a measure of last resort, and for the shortest time possible, as authorized by the court through strengthening of procedures to facilitate expedited processing in accordance with internationally accepted guarantees for the right to a fair trial;...” (Latvia CRC/C/LVA/CO/2, para. 62)

Unreasonable bail demands were a concern in the Philippines:

“... the Committee is concerned about unreasonable amounts requested for bail, which cause insurmountable financial obstacles for children and their parents, limitations as regards the suspension of sentences and poor detention conditions, including so-called secret cells...” (Philippines CRC/C/15/Add.259, para. 90)

The Committee was concerned about detention of children under terrorism legislation in Nepal:

“The Committee is also concerned about the reports of persons under 18 held under the Terrorist and Disruptive Activities (Control and Punishment) Ordinance which has no set minimum age and grants security forces wide powers to arrest and detain any person suspected of being associated with the armed groups, including children.”

It went on to recommend that the State should

“(a) Ensure that persons under 18 years are not held accountable, detained or prosecuted under anti-terrorism laws;...”

“The Committee recommends the State Party to amend or repeal the Terrorist and Disruptive Activities (Control and Punishment) Ordinance in the light of international juvenile justice standards and norms.” (Nepal CRC/C/15/Add.261, paras. 98 to 100)

In relation to the impact of emergency legislation in Northern Ireland, which is part of the United Kingdom, the Committee was concerned at the detention without charge of very young children for periods of up to seven days:

“... The Committee is concerned about the absence of effective safeguards to prevent the ill-treatment of children under the emergency legislation. In this connection, the Committee observes that under the same legislation it is possible to hold children as young as 10 for 7 days without charge. It is also noted that the emergency legislation which gives the police and army the power

to stop, question and search people on the street has led to complaints of children being badly treated. The Committee is concerned about this situation which may lead to a lack of confidence in the system of investigation and action on such complaints.” (United Kingdom CRC/C/15/Add.34, para. 10)

It followed this up when it examined the United Kingdom’s Second Report:

“... The Committee remains concerned at the negative impact of the conflict in Northern Ireland on children, including in the use of emergency and other legislation in force in Northern Ireland.

“The Committee recommends that the State Party:... In line with its previous recommendations ..., review the emergency and other legislation, including in relation to the system of administration of juvenile justice, at present in operation in Northern Ireland to ensure its consistency with the principles and provisions of the Convention.” (United Kingdom CRC/C/15/Add.188, paras. 53 and 54(c))

In relation to arrest, the Human Rights Committee states in its General Comment on article 9 of the International Covenant on Civil and Political Rights that “in criminal cases any person arrested or detained has to be brought ‘promptly’ before a judge or other officer authorized by law to exercise judicial power. More precise time limits are fixed by law in most States Parties and, in the view of the Committee, delays must not exceed a few days...” The Human Rights Committee goes on to state that “pre-trial detention should be an exception and as short as possible”. (Human Rights Committee, General Comment No. 8, 1982, HRI/GEN/1/Rev.8, paras. 2 and 3, p. 169)

The “Beijing Rules” requires (rule 10(2)) that following the apprehension of a juvenile, “A judge or other competent official or body shall, without delay, consider the issue of release”. The Rules also states: “Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time. Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement within a family or in an educational setting or home.” (Rule 13) The United Nations Rules for the Protection of Juveniles Deprived of their Liberty states that: “... Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention...” (Rule 17)

Imprisonment

In relation to sentences for criminal offences, the Committee has expressed concern at custodial sentences for young children and also at lengthy and indeterminate sentences:

“The Committee notes that the sanctions set forth in the legislation as regards juvenile offenders, especially in cases carrying the death penalty or life imprisonment, reduced respectively to life imprisonment or to 20 years imprisonment, are excessively high. Harsh sentences, as well as the occurrence of arbitrary detention of juveniles and the admittedly very difficult conditions of detention, are not in conformity with the provisions of articles 37 and 40 of the Convention.” (Burkina Faso CRC/C/15/Add.19, para. 11)

Following examination of Burkina Faso’s Second Report, the Committee expressed more detailed concern:

“... the Committee is deeply concerned at the possibility that children of 16 and 17 years of age are treated like adults and can be subjected to the death penalty or life imprisonment, which is a serious violation of article 37 of the Convention; the failure to separate children from adults in jails (with the exception of the jails in Ouagadougou and Bobo Dioulasso); the poor conditions of detention; the frequent recourse to and excessive length of pre-trial detention (often because of the long time needed for inquiries); the absence of a formal obligation to inform parents about the detention; the possibility for children to appeal only through their parents; the very limited possibilities for the rehabilitation and reintegration of juveniles following judicial proceedings; and the sporadic training of judges, prosecutors and prison staff.”

Among its recommendations was that Burkina Faso should

“... Consider deprivation of liberty only as a measure of last resort and for the shortest possible period of time, limit by law the length of pre-trial detention, and ensure that the lawfulness of this detention is reviewed by a judge without delay and regularly thereafter;... Amend legislation to allow children to appeal a decision without their parents;...” (Burkina Faso CRC/C/15/Add.193, paras. 60 and 62(c) and (e))

In relation to the United Kingdom, the Committee expressed concern at the introduction of “secure training orders” authorizing custody for 12- to 14-year-olds and other increases in custodial sentences:

“... The Committee also recommends the introduction of careful monitoring of the



new Criminal Justice and Public Order Act 1994 with a view to ensuring full respect for the Convention on the Rights of the Child. In particular, the provisions of the Act which allow for, inter alia, placement of secure training orders on children aged between 12 and 14, indeterminate detention, and the doubling of sentences which may be imposed on 15- to 17-year-old children should be reviewed with respect to their compatibility with the principles and provisions of the Convention.” (United Kingdom CRC/C/15/Add.34, para. 36)

When it examined the United Kingdom’s Second Report, the Committee’s concerns had multiplied:

“The Committee is particularly concerned that since the State Party’s Initial Report, children between 12 and 14 years of age are now being deprived of their liberty. More generally, the Committee is deeply concerned at the increasing number of children who are being detained in custody at earlier ages for lesser offences and for longer sentences imposed as a result of the recently increased court powers to issue detention and restraining orders. The Committee is therefore concerned that deprivation of liberty is not being used only as a measure of last resort and for the shortest appropriate period of time, in violation of article 37(b) of the Convention...”

Among the Committee’s recommendations was that the United Kingdom should:

“... Ensure that detention of children is used as a measure of last resort and for the shortest appropriate period of time and that children are separated from adults in detention, and encourage the use of alternative measures to the deprivation of liberty;...” (United Kingdom CRC/C/15/Add.188, paras. 59 and 62(e))

The Report of the United Nations Secretary-General’s Study on Violence Against Children recommends: “Detention should be reserved for child offenders who are assessed as posing a real danger to others, and significant resources should be invested in alternative arrangements, as well as community-based rehabilitation and reintegration programmes;...” (A/61/299, para. 112 (b))

Detention outside the juvenile justice system

The Committee emphasizes in its General Comment No. 10 on “Children’s rights in Juvenile Justice” that use of deprivation of liberty has very negative consequences for the child’s harmonious development and seriously hampers his/her reintegration in society. As indicated already, the Committee has pointed out that the provisions limiting restriction of liberty under article 37

apply to all instances of restriction of liberty, including, for example, in health and welfare institutions and in relation to asylum-seeking and refugee children. The limitations on restriction of liberty in paragraph (b) and the safeguards in paragraphs (c) and (d) must be applied equally to non-penal forms of detention, as must the standards set out in the relevant United Nations rules and guidelines. The Convention on the Rights of Persons with Disabilities, adopted in December 2006, requires:

“1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

- (a) Enjoy the right to liberty and security of person;
- (b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

“2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.” (Article 14)

In its General Comment No. 9 on “The rights of children with disabilities”, the Committee on the Rights of the Child reiterates that States should take where necessary specific measures to ensure that children with disabilities are protected by and benefit from all the rights provided in the Convention on the Rights of the Child (CRC/C/GC/9, paras. 73 and 74).

Detention of children in relation to asylum seeking and immigration. The Committee’s General Comment on “Treatment of unaccompanied and separated children outside their country of origin” states that their unaccompanied or migratory status cannot be a justification for detaining these children:

“In application of article 37 of the Convention and the principle of the best interests of the child, unaccompanied or separated children should not, as a general rule, be detained. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof. Where detention is exceptionally justified for other reasons, it shall be conducted in accordance with article 37(b) of the Convention that requires detention to



conform to the law of the relevant country and only to be used as a measure of last resort and for the shortest appropriate period of time. In consequence, all efforts, including acceleration of relevant processes, should be made to allow for the immediate release of unaccompanied or separated children from detention and their placement in other forms of appropriate accommodation.

"In addition to national requirements, international obligations constitute part of the law governing detention. With regard to asylum-seeking, unaccompanied and separated children, States must, in particular, respect their obligations deriving from article 31(1) of the 1951 Refugee Convention. States should further take into account that illegal entry into or stay in a country by an unaccompanied or separated child may also be justified according to general principles of law, where such entry or stay is the only way of preventing a violation of the fundamental human rights of the child. More generally, in developing policies on unaccompanied or separated children, including those who are victims of trafficking and exploitation, States should ensure that such children are not criminalized solely for reasons of illegal entry or presence in the country.

"In the exceptional case of detention, conditions of detention must be governed by the best interests of the child and pay full respect to article 37(a) and (c) of the Convention and other international obligations. Special arrangements must be made for living quarters that are suitable for children and that separate them from adults, unless it is considered in the child's best interests not to do so. Indeed, the underlying approach to such a programme should be 'care' and not 'detention'. Facilities should not be located in isolated areas where culturally appropriate community resources and access to legal aid are unavailable. Children should have the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel and their guardian. They should also be provided with the opportunity to receive all basic necessities as well as appropriate medical treatment and psychological counselling where necessary. During their period in detention, children have the right to education which ought, ideally, take place outside the detention premises in order to facilitate the continuance of their education upon release. They also have the right to recreation and play as provided for in article 31 of the Convention. In order to effectively secure the rights provided by article 37(d) of the Convention, unaccompanied or separated children deprived of their liberty shall be provided with prompt and free access to legal and other appropriate assistance, including

the assignment of a legal representative." (Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, paras. 61 to 63)

The policy of the Office of the United Nations High Commissioner for Refugees is that refugee children should not be detained. The UNHCR *Refugee Children – Guidelines on Protection and Care* states: "Unfortunately, refugee children are sometimes detained or threatened with detention because of their own, or their parents', illegal entry into a country of asylum. Because detention can be very harmful to refugee children, it must be 'used only as a measure of last resort and for the shortest appropriate period of time'". The *Guidelines* emphasizes the need for special arrangements: "Strong efforts must be made to have them released from detention and placed in other accommodation. Families must be kept together at all times, which includes their stay in detention as well as being released together." Detention must be in conformity with the State's law, and "a distinction must be made between refugees/asylum seekers and other aliens". International standards including those of the Convention and the relevant United Nations rules must be complied with (*Refugee Children – Guidelines on Protection and Care*, UNHCR, Geneva, 1994, pp. 86 to 88). UNHCR Executive Conclusion No.44 (1986) discusses the limited circumstances in which asylum seekers can be detained and sets out basic standards for their treatment.

The UNHCR Policy on Refugee Children requires UNHCR staff to specifically pursue the protection of refugee children at risk of detention (UNHCR Policy on Refugee Children, UNHCR Executive Committee, 6 August 1993, EC/SCP/82, para. 27).

The Committee on the Rights of the Child has expressed concern at detention affecting refugee and asylum-seeking children and aliens. For example:

"Notwithstanding the 1997 Alien's Act requirement to use 'more lenient means when minors are involved', the Committee is seriously concerned about legislation which permits the detention of asylum-seeking children pending deportation. The Committee urges the State Party to reconsider the practice of detaining asylum-seeking children, and that such children be treated in accordance with the best interests of the child and in the light of the provisions of articles 20 and 22 of the Convention." (Austria CRC/C/15/Add.98, para. 27)

When it examined Austria's Second Report, the Committee recommended that the State should:





“... fully take into account the principle of the best interests of the child when deciding on the deportation of unaccompanied and separated asylum-seeking children and to avoid their placement in custody pending deportation.” (Austria CRC/C/15/Add.251, para. 48)

“The Committee is deeply concerned at severe violations of the rights to freedom of movement and to choose one’s residence in the context of the State Party’s regroupment policy. The Committee is concerned further by the large number of children in regroupment camps and the extremely poor conditions in which they have to live, constituting, in many cases, cruel, inhuman and degrading treatment and violating numerous minimum standards with respect to children’s rights.

“The Committee urges the State Party to complete, without further delay, the process of closing the regroupment camps and, pending closure, to guarantee respect of all the civil rights and freedoms of children and their families living in such camps.” (Burundi CRC/C/15/Add.133, paras. 38 and 39)

Deprivation of liberty of children in need of protection. The Committee has noted that it does not accept that deprivation of liberty should be used for children in need of protection. Chile’s Initial Report indicates that “children under the age of 18 who have been abandoned, ill-treated and/or present behavioural problems, may be deprived of their liberty or have their liberty restricted”, initially in a centre for observation and diagnosis and subsequently, when a juvenile magistrate decides to apply a protective measure, which can include internment in specialized educational establishments The Initial Report notes that while the State has no right to impose penalties on children regarded as not responsible for criminal actions, “the correctional and rehabilitation measures which may be applied by the juvenile judge can extend to custodial measures which in fact are felt by the minor to be a penalty” (Chile CRC/C/3/Add.18, paras. 54 and 236). During discussion, a Committee member stated: “Deprivation of liberty was unacceptable in the case of children in need of protection because they had been abandoned or subjected to ill-treatment. Such children had committed no offence against the law... To deprive children of 16 or 17 years of age of their liberty for 15 days or more while awaiting a decision on their capacity for discernment, could affect them adversely and was contrary to the provisions of article 37 of the Convention, especially as it seemed that such detention could take place among convicted offenders.” Another Committee member noted that “if children in need of protection were placed in a position where they were

deprived of their liberty, they were in fact being deprived of the protection of the law.” (Chile CRC/C/SR.148, paras. 34, 35 and 38). When the Committee examined Chile’s Second Report, it reiterated its concern

“... that the Juvenile Act of 1967, based on the doctrine of ‘irregular situation’, which does not make a clear distinction, in terms of judicial procedures and treatment, between children in need of care and protection and those in conflict with the law, is still in force. It also notes with concern that detention is not used as a last resort, especially in the case of children who are poor and socially disadvantaged, and that often children are detained in detention centres for adults...”

The Committee recommended that Chile should:

“Continue reviewing laws and practices regarding the juvenile justice system in order to bring it as soon as possible into full compliance with the Convention, in particular articles 37, 40 and 39, as well as with other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).” (Chile CRC/C/15/Add.173, paras. 53 and 54)

The Committee insists that juvenile offenders should be separated from those detained for “behavioural problems”:

“The Committee is concerned that:... (c) Juvenile offenders, in the Netherlands, are sometimes detained with children institutionalized for behavioural problems;...”

The Committee went on to recommend:

“... Avoid detention of juvenile offenders with children institutionalized for behavioural problems;...” (Netherlands and Aruba CRC/C/15/Add.227, paras. 58 and 59(d))

The Committee has also noted that mentally ill children should never be detained in prison:

“The law permitting the placement of mentally disturbed children in jails should be reviewed as a matter of urgency.” (Nepal CRC/C/15/Add.57, para. 38)

The Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, in his report to the General Assembly in 2000, notes that he had received information about children being subjected to cruel, inhuman or degrading treatment in non-penal institutions: “Unlike most adults, children can be deprived of their liberty in a variety of legal settings other than those related to the criminal justice system and are thus reported to be particularly vulnerable to some forms of torture

or ill-treatment in an institutional environment... Unlike detention within the justice system, which in most cases will take place for a predetermined period of time, children are sometimes held in such institutions and subjected to cruel and inhuman or degrading treatment without time limits or periodic review or judicial oversight of the placement decision. Such indeterminate confinement, particularly in institutions that severely restrict their freedom of movement, can in itself constitute cruel or inhuman treatment.” (A/55/290, paras. 11 and 12)

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age”

This provision of article 37 stresses that children deprived of their liberty should not lose their fundamental rights, and that their treatment must take account of their age and child development. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty states in rule 13: “Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty, such as social security rights and benefits, freedom of association and, upon reaching the minimum age established by law, the right to marry.”

The Committee has often expressed concern at the conditions in detention institutions and places where children’s liberty is restricted. It has proposed that the detailed standards in the “Beijing Rules” and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty should be applied to all situations, and indicated that the Convention requires effective monitoring, inspection and complaints procedures, as well as appropriate training of all personnel. For example, it recommended to Nicaragua and Peru:

“... Ensure that deprivation of liberty is used only as a measure of last resort and improve the conditions of detention of persons below 18 – especially in police detention centres – notably by complying with the international standards as to surface area, ventilation, fresh air, natural and artificial light, proper food, drinking water and hygienic conditions;...” (Nicaragua CRC/C/15/Add.265, para. 74(c))

“... Improve the conditions of detention of persons below 18, notably by complying with the international standards as to surface area, ventilation, fresh air, natural and artificial light, proper food, drinking water and hygienic conditions;...” (Peru CRC/C/PER/CO/3, para. 72(c))

It told the United Kingdom:

“The Committee is also extremely concerned at the conditions that children experience in detention and that children do not receive adequate protection or help in young offenders’ institutions (for 15- to 17-year-olds), noting the very poor staff-child ratio, high levels of violence, bullying, self-harm and suicide, the inadequate rehabilitation opportunities, the solitary confinement in inappropriate conditions for a long time as a disciplinary measure or for protection, and the fact that girls and some boys in prisons are still not separated from adults.

“In addition, the Committee notes with concern that:... Children in custody do not always have access to independent advocacy services and to basic services such as education, adequate health care, etc.;...”

The Committee recommended that the United Kingdom should:

“... Ensure that every child deprived of his or her liberty has access to independent advocacy services and to an independent, child-sensitive and accessible complaint procedure; Take all necessary measures, as a matter of urgency, to review the conditions of detention and ensure that all children deprived of their liberty have statutory rights to education, health and child protection equal to those of other children;...” (United Kingdom CRC/C/15/Add.188, paras. 59 and 62(f) and (g))

The fact that deprivation of liberty occurs in “institutions” rather than prisons does not lessen the need for strict conditions, monitoring, etc. Article 3(3) of the Convention requires States to ensure that all institutions conform to standards established by competent authorities (see page 41).

The Report of the United Nations Secretary-General’s Study on Violence Against Children recommends that States:

“Regularly reassess placements by reviewing the reasons for a child’s placement in care or detention facilities, with a view to transferring the child to family or community-based care;

“Establish effective and independent complaints, investigation and enforcement mechanisms to deal with cases of violence in care and justice system;





“Ensure that children in institutions are aware of their rights and can access the mechanisms in place to protect those rights;

“Ensure effective monitoring and regular access to care and justice institutions by independent bodies empowered to conduct unannounced visits, conduct interviews with children and staff in private, and investigate allegations of violence;

“Ratify the Optional Protocol to the Convention against Torture, which provides for a system of independent preventive visits to places of detention.” (Report of the independent expert for the United Nations study on violence against children, United Nations, General Assembly, sixty-first session, August 2006, A/61/299, para. 112 (c) to (g))

“In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so”

The principle in article 37(c) that every child deprived of liberty shall be separated from adults is qualified – “unless it is considered in the child’s best interest not to do so”. In the International Covenant on Civil and Political Rights, article 10(2)(b) requires: “Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.” Similarly, in the Standard Minimum Rules for the Treatment of Prisoners, rule 8(d) requires: “Young prisoners shall be kept separate from adults.” In a General Comment on article 10 of the Covenant on Civil and Political Rights, the Human Rights Committee states: “Subparagraph 2(b) calls, *inter alia*, for accused juvenile persons to be separated from adults. The information in reports shows that a number of States are not taking sufficient account of the fact that this is an unconditional requirement of the Covenant. It is the Committee’s opinion that, as is clear from the text of the Covenant, deviation from States Parties’ obligations under subparagraph 2(b) cannot be justified by any consideration whatsoever.” (Human Rights Committee, General Comment No. 9, 1982, HRI/GEN/1/Rev.8, para. 2, pp. 170 and 171)

Several States Parties made reservations or declarations concerning this provision of article 37. For example, Australia notes: “... In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with

their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is unable to comply with the obligations imposed by article 37(c)”. Canada “accepts the general principle of article 37(c) of the Convention, but reserves the right not to detain children separately from adults where this is not appropriate or feasible”. Iceland notes that separation is not obligatory under Icelandic law, but that the law provided for age to be taken into account when deciding placement: “... it is expected that decisions on the imprisonment of juveniles will always take account of the juvenile’s best interest”.

New Zealand reserved the right not to apply article 37(c) “where the shortage of suitable facilities makes the mixing of juveniles and adults unavoidable; and further reserves the right not to apply article 37(c) where the interests of other juveniles in an establishment require the removal of a particular juvenile offender or where mixing is considered to be of benefit to the persons concerned.” And the United Kingdom states: “Where at any time there is a lack of suitable accommodation or adequate facilities for a particular individual in any institution in which young offenders are detained, or where the mixing of adults and children is deemed to be mutually beneficial, the United Kingdom reserves the right not to apply article 37(c) in so far as those provisions require children who are detained to be accommodated separately from adults.” (CRC/C/2/Rev.8, pp. 16, 24, 34 and 42)

The Committee on the Rights of the Child has expressed concern at these reservations and welcomed commitments from States Parties to review them with a view to withdrawal. The Committee has commented on instances of non-separation and has also noted that separation from adults applies to all situations of restriction of liberty.

The United Nations Secretary-General’s Study on Violence Against Children reports: “In keeping with the provisions of the Convention on the Rights of the Child, national legislation in most countries requires separate facilities for children in conflict with the law in order to prevent abuse and exploitation by adults. Yet detention with adults is routine in many countries. Children in detention are also at heightened risk of self-harm or suicidal behaviour, particularly in cases of prolonged or indefinite detention, isolation, or when detained in adult facilities.” (A/61/299, para. 63)

Separation of pre-trial detainees from other children deprived of liberty

The International Covenant on Civil and Political Rights requires that “Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons” (article 10(2)(a)). Also the Standard Minimum Rules for Prisoners states that: “Untried prisoners shall be kept separate from convicted prisoners” (rule 8(b)). And the United Nations Rules for the Protection of Juveniles Deprived of their Liberty says: “... Untried detainees should be separated from convicted juveniles” (rule 17). The Committee on the Rights of the Child has confirmed that pre-trial detainees should be separated from convicted detainees. For example, the Committee told Jordan

“... [it] also deplores the fact that children taken into custody though not convicted of any criminal offence, may nevertheless be kept in detention in the same premises as convicted persons.” (Jordan CRC/C/15/Add.21, para. 16)

And to Paraguay it noted its concern

“... that in at least one major detention centre, persons who have been convicted and those awaiting trial are not housed separately.” (Paraguay CRC/C/15/Add.75, para. 28)

The Committee told Costa Rica to

“... ensure that persons below 18 when in custody are in any case separated from adults and those waiting for sentences are separated from those sentenced to deprivation of liberty...” (Costa Rica CRC/C/15/Add.266, para. 56)

“... and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances”

Paragraph (c) of article 37 requires that every child deprived of liberty shall “have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances”. Such circumstances would have to be justified in the context of the Convention’s principles, including in particular the child’s best interests. The Committee’s General Comment No. 10 on “Children’s rights in Juvenile Justice” states that “exceptional circumstances” which may limit contact should be clearly described in the law and not left to the discretion of the relevant authorities. In order to facilitate visits, the child should be placed in a facility that is as close as possible to the place of residence of his/her family (CRC/C/GC/10, para. 28c).

“Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action”

Article 40 provides further detail of the safeguards that must be provided in relation to the administration of juvenile justice, as does the “Beijing Rules” (the United Nations Standard Minimum Rules for the Administration of Juvenile Justice) and other instruments (for full discussion, see article 40, page 618). In its General Comment No. 10 on “Children’s rights in Juvenile Justice”, the Committee proposes that every child arrested and deprived of liberty should be brought before a competent authority to examine the legality of any continuation of the deprivation of liberty within 24 hours. The legality of any pre-trial detention should be reviewed regularly, preferably every two weeks. Any child in pre-trial detention should be formally charged and brought before a court not more than 30 days after the detention began. Conscious of the practice of adjourning court hearings, often more than once, the Committee urges States Parties to introduce the necessary legal provisions to ensure that a final decision is made not later than six months after charging (CRC/C/GC/10, para. 28a).

The right to challenge the legality of any deprivation of liberty and to a prompt decision is guaranteed by article 8 of the Universal Declaration on Human Rights: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”; and article 9(4) of the International Covenant on Civil and Political Rights says: “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.” The Human Rights Committee has provided comments on what constitutes a “court” for this purpose and also notes that article 9(4) of the Covenant applies to all cases of detention, including those ordered by an administrative body or authority. (See Antti Vuolanne





v Finland (265/1987) (7 April 1989), Official Records of the General Assembly, forty-fourth session, Supplement No. 40 A/44/40, annex X, sect. J, etc., quoted in Human Rights and Pre-trial Detention, p. 40.)

The Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment (General Assembly resolution 43/173, 9 December 1988, annex) provides in principle 32: “1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful. 2. The proceedings ... shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.” The Committee has emphasized that the safeguards apply to all forms of deprivation of liberty, not only those in the system of juvenile justice (and it should be noted that rule 3 of the “Beijing Rules” encourages the extension of the principles of the Rules to cover all juveniles dealt with in care and welfare proceedings). In the report following its Day of General Discussion on the “Administration of juvenile justice” the Committee noted:

“Concern was expressed at the placement of children in institutions, under a welfare pretext, without taking into due consideration the best interests of the child nor ensuring the fundamental safeguards recognized by the Convention, including the right to challenge the decision of placement before a judicial authority, to a periodic review of the treatment provided to the child and all other circumstances relevant to the child’s placement and the right to lodge complaints.” (Committee on the Rights of the Child, Report on the tenth session, October/November 1995, CRC/C/46, para. 228)

Complaints procedures

The Committee has interpreted article 12 of the Convention as requiring the provision of complaints procedures for children (see page 158) and has highlighted the particular need for complaints procedures for children whose liberty is restricted. In its General Comment No. 10 on “Children’s rights in Juvenile Justice”, the Committee states:

“Every child should have the right to make requests or complaints, without censorship as to the substance, to the central administration, the judicial authority or

other proper independent authority and to be informed of the response without delay; children need to know about and have easy access to these mechanisms.” (Committee on the Rights of the Child, General Comment No. 10, 2007, CRC/C/GC/10, para. 28c)

Rule 24 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty requires that “On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.”

Rule 25 says: “All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints, and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.”

In addition, rules 75 to 78 require that juveniles have the opportunity to make requests or complaints to the direction of the detention facility and his or her authorized representative, to the central administration, the judicial authority or other proper authorities through approved channels. “Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.” (Rule 77) “Every juvenile should have the right to request assistance from family members, legal counselors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.” (Rule 78)

Training

The Committee has consistently recommended that all those involved in any form of restriction of liberty of children, and in the administration of

juvenile justice systems, should receive training in the principles and provisions of the Convention and of the relevant United Nations rules and guide-

lines and this is reiterated in detail in its General Comment No. 10 on “Children’s rights in Juvenile Justice” (CRC/C/GC/10).

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



Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 37, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 37 is relevant to **departments of justice, home affairs, social welfare, immigration**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 37 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 37 likely to include training for **the judiciary, lawyers, police, all those working in the juvenile justice system and institutional care including detention, and any other forms of restriction of liberty**)?

• Specific issues in implementing article 37

- Is the prohibition of torture and all other cruel, inhuman or degrading treatment or punishment included in legislation specifically applying to all children in the jurisdiction?
- Is torture defined in this legislation?
- Are there no exceptions allowed to this legislation under any circumstances?
- Is capital punishment prohibited in legislation for offences committed by children below the age of 18?
- Is life imprisonment without the possibility of release not available in any circumstances for under-18-year-olds?
- Are indefinite or indeterminate sentences not available in any circumstances for under-18-year-olds?



How to use the checklist, see page XIX

Is any form of corporal punishment prohibited in legislation and not used for under-18-year-olds

- as a sentence of the courts or a punishment in penal institutions?
- as a punishment in schools?
- as a punishment in any other institutions which include children?
- as a punishment in any forms of alternative care?
- as a punishment within the family?
- Is solitary confinement of children prohibited under all circumstances?
- Has the State initiated or promoted awareness-raising and information campaigns to protect children from torture and other cruel, inhuman or degrading treatment?
- Has the State ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment?
- Has the State ratified the Optional Protocol to the Convention against Torture?

Arrest

- Are all under-18-year-olds treated as children within the justice system?

Does legislation, policy and practice ensure that arrest of children is used

- only as a measure of last resort?
- for the shortest appropriate period of time?

Is there a minimum age below which a child

- cannot be arrested?
- cannot be detained prior to arrest by police or other authorities?

Do legislation and other measures in the State ensure that any detention of a juvenile prior to arrest is

- only used as a measure of last resort?
- for the shortest appropriate period of time?

Deprivation of liberty following arrest

- Is there a defined maximum period for detention of a child following arrest without a court hearing at which the detention can be challenged?
- Is there a minimum age below which a child cannot be detained following arrest and prior to a court hearing?

Does legislation ensure that any detention of a juvenile following arrest is

- a measure of last resort?
- for the shortest appropriate time?

Pre-trial deprivation of liberty

Does legislation ensure that any pre-trial detention of a child is

- a measure of last resort?
- for the shortest appropriate time?
- Is there a minimum age below which a child cannot be detained prior to a trial?
- Does legislation ensure that children detained pre-trial are separated from convicted children?

How to use the checklist, see page XIX



- Are alternative measures available to prevent pre-trial detention of children whenever possible?

Deprivation of liberty as a sentence of the courts

- Is there a minimum age at which a sentence of imprisonment may be imposed on a child?
- Are there no other arrangements that allow for the restriction of liberty of children who are alleged as, accused of or recognized as having committed certain crimes below this minimum age?

Do safeguards exist to ensure that sentences of imprisonment, or sentences that involve the restriction of liberty of a child, are used only

- as a measure of last resort?
- for the shortest appropriate time?

Restriction of liberty other than as a sentence of the courts

Is all other legislation permitting the restriction of liberty of under-18-year-olds consistent with article 37 and other articles, wherever such restriction occurs, including

- in the criminal/juvenile justice system?
- in the welfare system?
- in the education system?
- in the health system including mental health?
- in relation to asylum seeking and immigration?
- in any other circumstances whatsoever, including, for example, for "status" offences?
- In each case, does the legislation define a minimum age below which no child (boy/girl) may have his or her liberty restricted?

In each case, does the legislation ensure that any detention outside the penal system is

- a measure of last resort?
 - for the shortest appropriate period of time?
 - not for an indeterminate period?
 - Is there restriction of liberty of children in circumstances not set out in legislation?
- Does legislation exist to prevent arbitrary restriction of liberty of children in
- State-provided institutions and services?
 - other institutions and services?
- Does legislation exist to limit deprivation of liberty of children by parents/guardians/foster parents, and so forth?

Conditions in detention

(See also the detailed standards in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty)

- Have the United Nations Rules for the Protection of Juveniles Deprived of their Liberty been incorporated into legislation applying to all situations of deprivation of liberty?
- Is there effective inspection and monitoring of all institutions in which children may be deprived of their liberty?



How to use the checklist, *see page XIX*

- Is the right of the child deprived of liberty to a periodic review of his or her situation and treatment set out in legislation?
- Are the details of any restriction of liberty of any child appropriately registered, reported and recorded?
- Is disaggregated data available on all children deprived of liberty?
- Do all children deprived of liberty have access to effective complaints procedures concerning all aspects of their treatment?

Separation from adults

Are children always separated from adults in detention unless it is considered not to be in the child's best interest

- prior to arrest?
- following arrest?
- prior to trial?
- following sentence by a court?
- in the health, including mental health, system?
- in the welfare system?
- in relation to asylum seeking and immigration?
- in any other situation?

Contacts with family while detained

- Is the right of the child deprived of liberty to maintain contact with his or her family through correspondence and visits set out in legislation?
- Are any restrictions on this right limited to exceptional circumstances?
- In case of any restrictions, does the child concerned have a right of appeal to an independent body?

Access to legal and other assistance

Does the child deprived of liberty have the right to prompt legal and other appropriate assistance

- when detained prior to arrest?
- on arrest?
- when detained pre-trial?
- when detained following a sentence of the courts?
- when deprived of liberty in any other circumstances?

Arrangements to challenge restriction of liberty

Does every child deprived of liberty have the right to challenge the deprivation of liberty before a court or some other competent authority

- when detained before arrest?
- when detained following arrest?
- when sentenced to be detained?
- when their liberty is restricted in other circumstances?
- In the case of such challenges of restriction of liberty, does legislation guarantee the child a prompt decision, within a defined period of time?



Reminder: The Convention is indivisible and its articles interdependent.
Article 37 should not be considered in isolation.

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground

Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children

Article 6: right to life and maximum possible survival and development

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

Closely related articles

Articles whose implementation is particularly related to that of article 37 include:

Article 19: protection from all forms of violence

Article 20: alternative care

Article 22: refugee children

Article 24: restriction of liberty in health service

Article 25: periodic review of placement/treatment

Article 34: protection from sexual exploitation

Article 38: armed conflict

Article 39: rehabilitative care for victims of torture, etc.

Article 40: juvenile justice

Protection of children affected by armed conflict

article

38

Text of Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Under article 38 of the Convention on the Rights of the Child, States Parties are required to:

- respect and ensure respect for rules of international humanitarian law applicable to them in armed conflicts (principally, the four Geneva Conventions and two additional Protocols);
- take all feasible measures to ensure that under-15-year-olds do not take a direct part in hostilities;
- refrain from recruiting under-15-year-olds into armed forces;
- give priority to the oldest when recruiting 15- to 18-year-olds;

- take all feasible measures to ensure protection and care of children affected by an armed conflict.

The Committee on the Rights of the Child has emphasized that States should take measures to secure the rights of all children within their jurisdiction in times of armed conflict and that the principles of the Convention are not subject to derogation in times of armed conflict. In particular, it has stressed its belief that, in the light of the definition of the child and the principle of the best interests of the child, no child under the age of 18 should be allowed to be involved in hostilities, either directly or indirectly, and that no child under 18 should be recruited into armed forces, either through conscription or voluntary enlistment.

Summary



In May 2002, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict entered into force. This requires States to “take all feasible measures” to ensure that under-18-year-olds do not take a direct part in hostilities and to ensure that they are not compulsorily recruited, and it replaces 15 with 16 years as the minimum age for recruitment. This is because it states that States Parties should raise “in years” the minimum age for voluntary recruitment set by article 38 – in other words 16 becomes the minimum age for recruitment under the Protocol. By June 2007 the Protocol had been ratified or acceded to by over one hundred States.

The Rome Statute of the International Criminal Court, adopted in 1998, characterizes as a war crime conscripting or enlisting children under the age of 15 into national armed forces at a time of armed conflict or using them to participate actively in hostilities (article 8).

In 1999, the General Conference of the International Labour Organization adopted the Worst Forms of Child Labour Convention (No.182), including in its definition of the worst forms of child labour “forced or compulsory recruitment of children for use in armed conflict” (article 3).

In 1996, a major study, proposed by the Committee, *Impact of Armed Conflict on Children*, by Ms Graça Machel, was presented to the United Nations General Assembly. Subsequently, a Special Representative of the Secretary-General for children and armed conflict was appointed and the Security Council has adopted resolutions condemning in strong terms the involvement of children in armed conflict. ■

International humanitarian law

The Committee has indicated that the relevant international humanitarian law, referred to in paragraphs 1 and 4 of article 38, includes the four Geneva Conventions, the three Additional Protocols, the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, the Declaration of the Rights of the Child (in which principle 8 states: “The child shall in all circumstances be among the first to receive protection and relief”), and the Convention on the Rights of the Child (Committee on the Rights of the Child, Report on the second session, September/October 1992, CRC/C/10, para. 65). Mention was also made of other United Nations standards, such as the International Covenant on Civil and Political Rights, and General Comment No. 17, adopted by the Human Rights Committee on article 24 of that Covenant, which recog-

nizes the right of children to necessary protection. In its General Comment, the Human Rights Committee emphasizes that “as individuals, children benefit from all of the civil rights enunciated in the Covenant”. It also “wishes to draw the attention of States Parties to the need to include in their reports information on measures adopted to ensure that children do not take a direct part in armed conflicts”. It goes on to note that while the Covenant does not set an age at which a child attains majority, “... a State Party cannot absolve itself from its obligations under the Covenant regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law.” (Human Rights Committee, General Comment No. 17, 1989, HRI/GEN/1/Rev.8, pp. 183 *et seq.*)

During the drafting of article 38, there was a strong move not only to ensure that its provisions did not in any way undermine existing standards in international humanitarian law but also to go beyond existing international standards so that children were protected up to the age of 18, in order to secure consistency with the rest of the Convention. The final version of article 38 was a compromise. One representative of the Working Group expressed dissatisfaction with the “speed and confusion” of this discussion and several representatives indicated that they could not join the consensus in adopting the text, although the chairman ruled that it had been adopted by consensus (E/CN.4/1989/48, pp. 110 to 116; Detrick, pp. 512 to 515; also E/CN.4/1989/48, pp. 5 to 8; Detrick, p. 630).

The study on the *Impact of Armed Conflict on Children* (see below, page 577) notes that the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and the National Red Cross and Red Crescent Societies have adopted the following as a full definition of international humanitarian law: “international rules, established by treaties or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts and which, for humanitarian reasons, limit the right of parties to a conflict to use the methods and means of warfare of their choice or protect persons and property that are, or may be, affected by conflict”. The study notes that the Convention on the Rights of the Child provides “the most comprehensive and specific protection for children”. It also mentions the relevance of the two International Covenants, and the Convention on the Elimination of All Forms of Discrimination against Women, and other specialist treaties covering such issues as torture,

genocide and racial discrimination. The 1951 Convention relating to the Status of Refugees and its 1967 Protocol (see article 22, page 307) provide basic standards for the protection of refugees in countries of asylum. Beyond this, there are various regional instruments (A/51/306, paras. 211 (note 40), 226 *et seq.*, and 222 to 225).

The Special Representative on children and armed conflict has also compiled a list of the relevant human rights standards. As well as the above-mentioned treaties, the following provisions are listed:

“... The Rome Statute of the International Criminal Court (1998) classifies as war crimes the enlistment and use of children under age 15 in hostilities, intentional attacks on hospitals and schools, rape and other grave acts of sexual violence against children. In addition, the forcible transfer of children from a group targeted for destruction constitutes genocide under the Statute;

“International Labour Organization Convention No.182 (1999) declares child soldiering to be among the worst forms of child labour and prohibits forced or compulsory recruitment of children under the age of 18 in armed conflict;

“The African Charter on the Rights and Welfare of the Child (1999) establishes 18 as the minimum age for all compulsory military recruitment and participation in hostilities;

“Security Council resolutions 1261 (1999), 1314 (2001), 1379 (2001), 1460 (2003) and 1539 (2004) [resolution 1612 (2005) can now be added to these resolutions];...”

The Special Representative points out that additionally, “... concrete commitments... have been entered into by parties to conflict; these commitments typically concern recruitment and use of children, attacks on schools and hospitals, assurance of humanitarian access, observance of humanitarian ceasefires, release of abducted children, use of landmines, etc. ... In addition to international instruments and standards, various societies can draw on their own traditional norms governing the conduct of warfare. Societies throughout history have recognized the obligation to provide children with special protection from harm, even in times of war. Distinctions between acceptable and unacceptable practices have been maintained, as have time-honoured taboos and injunctions prohibiting indiscriminate targeting of civilian populations, especially children and women. These traditional norms provide a “second pillar of protection”, reinforcing and complementing the “first pillar of protection” provided by

international instruments.” (Report of the Special Representative to the Secretary-General on children and armed conflict to the Commission on Human Rights, 2005, E/CN.4/2005.77, para. 18)

The Geneva Conventions and Additional Protocols

The four Geneva Conventions were adopted in 1949 at the Diplomatic Conference of Geneva, sponsored by the International Committee of the Red Cross: Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949; Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949; Convention III relative to the Treatment of Prisoners of War, 1949; and Convention IV relative to the Protection of Civilian Persons in Time of War, 1949. In 2006 the Geneva Conventions achieved universal ratification, as all Member States of the United Nations had ratified or acceded to them.

Convention IV offers general protection to children as civilians. Article 3, common to all four Conventions, covers “armed conflict not of an international character occurring in the territory of one of the High Contracting Parties”. Persons “taking no active part in the hostilities” must in all circumstances be treated humanely, and be protected from “violence to life and person”, in particular from murder of all kinds, mutilation, cruel treatment and torture, hostage-taking, humiliating and degrading treatment, and so forth. The Conventions do not contain any minimum age for child participation in hostilities. Also under the Convention IV, children and pregnant women are among those for whom the parties should endeavour to conclude local agreements to remove them from “besieged or encircled areas” (article 17); each State must allow the free passage of relief intended for children under the age of 15 and maternity cases (article 23); children under the age of 15 and mothers of children under 7 are among those who can be received into the hospital or safety zones established by the parties in an international armed conflict (article 38(5)); an occupying power must facilitate the proper working of institutions devoted to the care of children in occupied territories (article 50). (Other provisions relating to children are in articles 81 and 89.)

In 1977, two Protocols Additional to the Conventions were adopted. Protocol I, covering international armed conflicts, requires that the fighting parties distinguish at all times between combatants and civilians and that the only legal





targets of attack should be military in nature. It covers all civilians, with two articles offering specific protection to children. Article 77 – Protection of children – states:

“1. Children shall be the object of special respect and shall be protected from any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.

2. The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest.

3. If, in exceptional cases, despite the provisions of paragraph 2, children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse party, they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war.

4. If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units as provided in Article 75, paragraph 5.

5. The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed.”

Article 78 of Protocol I deals with the evacuation of children to another country; this should not take place except for compelling reasons, and the article establishes some of the terms under which any evacuation should take place (in relation to internal conflicts, evacuation of children is covered in Protocol II, article 4(3)(e) – see below).

Also in Protocol I, newborn babies and maternity cases are categorized with “wounded” and “sick”, in need of respect and protection (article 8(a)).

Article 4 of Protocol II, which applies to non-international – that is internal – armed conflicts, includes a paragraph on protection of children, requiring that:

“3. Children shall be provided with the care and aid they require, and in particular:

(a) they shall receive an education, including religious and moral education, in keeping with

the wishes of their parents, or in the absence of parents, of those responsible for their care;

(b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;

(c) children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;

(d) the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of subparagraph (c) and are captured;

(e) measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being.”

A third Protocol was adopted in 2005, which adds the non-religious and politically neutral emblem of the ‘red crystal’ to the Red Cross and Red Crescent emblems for assistance to victims of armed conflict, but which does not directly affect children.

Declaration on the Protection of Women and Children in Emergency and Armed Conflict

In 1974, the United Nations General Assembly adopted the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (resolution 3318 (XXIX)). In its Preamble the General Assembly expresses its “deep concern over the sufferings of women and children belonging to the civilian population who in periods of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence are too often the victims of inhuman acts and consequently suffer serious harm...” The General Assembly is “conscious of its responsibility for the destiny of the rising generation and for the destiny of mothers, who play an important role in society, in the family and particularly in the upbringing of children. Bearing in mind the need to provide special protection of women and children belonging to the civilian population...” This calls for strict observance of principles covering:

protection from attacks and bombing and the use of chemical and bacteriological weapons; fulfilment of the Geneva Conventions and other international instruments; all efforts to spare women and children from the ravages of war; considering criminal all forms of repression and cruel and inhuman treatment of women and children; and that women and children finding themselves in circumstances of emergency or armed conflict must not be deprived of shelter, food, medical aid or other inalienable rights.

Study on Impact of Armed Conflict on Children

In its third session, the Committee on the Rights of the Child recommended to the General Assembly that it should request the United Nations Secretary-General to undertake a study “on ways and means of improving the protection of children from the adverse affect of armed conflicts” (Report on the third session, January 1993, CRC/C/16, p. 4, and Annex VI, p. 58). It was this proposal that led to the appointment by the Secretary-General of Ms. Graça Machel to carry out the study (pursuant to General Assembly resolution 48/157). The study was published in August 1996 and presented to the fifty-first session of the General Assembly. A review of progress was published in 2000 (see box, page 578).

The study and its annexes provide detailed discussion and recommendations on “Mitigating the impact of armed conflict on children”; “Relevance and adequacy of existing standards for the protection of children”; “Reconstruction and reconciliation”; “Conflict prevention” and “Implementation mechanisms”.

In relation to implementation of international standards, the study proposes:

- that all States that have not done so should become parties to the Convention on the Rights of the Child immediately;
- all Governments should adopt measures to effectively implement the Convention, the Geneva Conventions and their Additional Protocols and the 1951 Convention relating to the Status of Refugees and its Protocol;
- Governments must train and educate the judiciary, police, security personnel and armed forces, especially those participating in peace-keeping operations, in humanitarian and human rights law;
- humanitarian organizations should similarly train their staff. All international bodies working in conflict zones should establish

procedures for prompt, confidential and objective reporting of violations that come to their attention;

- humanitarian organizations should assist Governments in educating children about their rights;
- humanitarian agencies and organizations should seek to reach signed agreements with non-state entities, committing them to abide by humanitarian and human rights law;
- civil society should actively disseminate humanitarian and human rights law and engage in advocacy, reporting and monitoring of infringements of children’s rights;
- building on existing guidelines, UNICEF should develop more comprehensive guidelines on the protection and care of children in conflict situations;
- the Committee on the Rights of the Child should be encouraged to include in its report to the General Assembly specific information on the measures adopted by States Parties to protect children in situations of armed conflict.

(A/51/306, para. 240)

These recommendations to States were reiterated in the outcome document of the United Nations General Assembly’s special session on children in 2002, which also called on States to:

“Ensure that issues pertaining to the rights and protection of children are fully reflected in the agendas of peacemaking processes and in ensuing peace agreements, and are incorporated, as appropriate, into United Nations peacekeeping operations and peace-building programmes; and involve children where possible in these processes...

“Put an end to impunity, prosecute those responsible for genocide, crimes against humanity, and war crimes and exclude, where feasible, these crimes from amnesty provisions and amnesty legislation, and ensure that whenever post-conflict truth and justice-seeking mechanisms are established, serious abuses involving children are addressed and that appropriate child-sensitive procedures are provided...

“Curb the illicit flow of small arms and light weapons and protect children from landmines, unexploded ordnances and other war materiel that victimize them and provide assistance to victimized children during and after armed conflict...

“Assess and monitor regularly the impact of sanctions on children and take urgent and effective



Graça Machel's review of progress since her 1996 report on the *Impact of Armed Conflict on Children*

In September 2000, an international conference on war-affected children was held in Winnipeg, Canada, and Ms. Machel presented a review of progress made and obstacles encountered since 1996. This is her conclusion:

“Significant progress has been made since the 1996 Report on the *Impact of Armed Conflict on Children* was introduced.

“The collective energy and commitment of non-governmental organizations and other civil society groups, regional organizations, the United Nations and governments, has resulted in an impressive glossary of achievements, nationally and internationally. Children are now more central to the peace and security agenda. War crimes against children and women in conflict have been prosecuted and violations are now being documented and reported more systematically. International standards protecting children in conflict have been strengthened. Children are actively working to build peace in their communities. Efforts have been made to better target sanctions. And much more is known about the ways in which small arms and light weapons destroy children's lives. The focus of humanitarian assistance – whether it is access to food, education, water, or land and housing is shifting inexorably towards meeting the rights and needs of children affected by armed conflict.

“In spite of this progress, the assaults against children continue. An estimated 300,000 children are still participating in armed combat. Children in 87 countries live amid the contamination of more than 60 million landmines. At least 20 million children have been uprooted from their homes. Girls and women continue to be marginalized from mainstream humanitarian assistance and protection. Humanitarian personnel continue to be targeted and killed. Millions of children are abandoned to cope with the multiple and compounded effects of armed conflict and HIV/AIDS. Hundreds of thousands of children Small arms and light weapons continue to proliferate excessively. Millions of children are scarred, physically and psychologically.

“In tolerating this scourge of war against children we ourselves become complicit. Power and greed can never be an excuse for sacrificing children. No one – not the United Nations, not regional organizations, not governments, nor civil society groups – has moved quickly enough or done enough. The international community, in all of its manifestations, must adopt a new sense of urgency. The Security Council must lead the international community with speed to embrace the recommendations in this review and to prevail against impunity for crimes committed against children. Children's protection should not have to be negotiated. Those who wage, legitimize and support wars must be condemned and held to account. Children must be cherished, nurtured and spared the pernicious effects of war. Children can't afford to wait.”

(The Machel Review 1996-2000, Conclusion, A/55/749, p. 61)

measures in accordance with international law with a view to alleviating the negative impact of economic sanctions on women and children...” (Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, paras. 21, 23, 26 and 30)

The United Nations Special Representative

One outcome of the study was that, on the recommendation of the United Nations General Assembly, in 1997 the Secretary-General appointed a Special Representative for Children and Armed Conflict (Mr. Olara Otunnu, who was replaced in 2006 by Ms Radhika Coomaraswamy).

The Special Representative is mandated to work closely with the Committee on the Rights of the Child, and to report annually to the General Assembly and the Commission on Human Rights (now the Human Rights Council). The Special Representative also takes a leading role in preparing the Secretary-General's reports to the Security Council on children and armed conflict. In 2001 the Security Council endorsed a proposal to list parties that use children in situations of armed conflict; and since then the Secretary-General has presented annual lists of offending parties that recruit and use children.

In 2005 the Special Representative proposed to the Commission on Human Rights (now Council)



that the United Nations and national governments should monitor and report on six priority areas of concern, which “constitute especially egregious violations against children”. These are:

- killing or maiming of children;
- recruiting or using child soldiers;
- attacks against schools or hospitals;
- rape and other grave sexual violence against children;
- abduction of children;
- denial of humanitarian access to children.

The report observes that, although the Security Council and other United Nations bodies have responsibility for the prevention of these violations, “Governments have the most direct formal, legal and political responsibility to ensure the protection of all children exposed to armed conflict within their countries. It is important to stress both the centrality and the immediacy of the role of national authorities of providing effective protection and relief to all children in danger. In this regard, national Governments constitute the first ‘destination for action’, the first line of response. Any actions by United Nations entities and international NGOs at the country level should always be designed to support and complement the protection and rehabilitation roles of national authorities, never to supplant them. And in situations where national protection institutions have been greatly weakened by the experience of protracted armed conflict, international partners should make it a priority to support the rebuilding of local institutions and capacities for protection and rehabilitation.” (Report of the Special Representative of the Secretary-General for Children and Armed Conflict to the sixtieth session of the Commission on Human Rights, E/CN.4/2005/77, paras. 15 and 55)

Optional Protocol on the involvement of children in armed conflict

The Optional Protocol to the Convention on the Rights of the Child, adopted unanimously by the United Nations General Assembly in 2000, came into force in 2002 and, by June 2007, had over one hundred ratifications or accessions. The Protocol emphasizes in its Preamble that “to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child, there is a need to increase the protection of children from involvement in armed conflict” (see Appendix 2, page 692). States Parties to the Protocol must

report to the Committee within two years of ratification; thereafter they must include information on implementation in their five-yearly Periodic Reports under the Convention. (For full commentary, see page 659 and for *Reporting Guidelines*, CRC/OP/AC/11, see page 704).

The Optional Protocol requires States Parties to “take all feasible measures” to ensure that members of their armed forces aged under 18 do not take a direct part in hostilities (article 1), and ensure that under-18-year-olds are not compulsorily recruited into their armed forces (article 2). They must deposit a binding declaration on ratification setting out the minimum age for voluntary recruitment and safeguards adopted to ensure that such recruitment is not forced or coerced. They are required to raise the age for voluntary recruitment from 15 “in years” (article 3).

ILO Worst Forms of Child Labour Convention (No.182)

In 1999, the General Conference of the International Labour Organization adopted the Worst Forms of Child Labour Convention (No.182) and Recommendation (No.190). For the purposes of this Convention, the term “worst forms of child labour” includes “forced or compulsory recruitment of children for use in armed conflict” (see article 32, page 479).

By August 2007, 165 countries had ratified this Convention. Countries ratifying this Convention must take “time-bound measures” – immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour, including rehabilitating the children concerned and addressing root causes. ILO’s International Programme on the Elimination of Child Labour (IPEC) focuses on the social rehabilitation of demobilized child soldiers and runs interregional projects involving many of the States who have significant numbers of child soldiers.

Security Council resolutions on children and armed conflict

In August 1999, the Security Council adopted an unprecedented resolution, expressing “its grave concern at the harmful and widespread impact of armed conflict on children and the long-term consequences this has for durable peace, security and development”. It made detailed recommendations for action by all parties to armed conflicts and others (Security Council, S/RES/1261(1999)). It asked the United Nations Secretary-General to submit a report to it on implementation by July 2000. This initial report emphasized the disproportionate impact of armed conflict on





children. The Security Council requested subsequent reports from the Secretary-General, submitted in 2002, 2003, 2005 and 2006.

The Security Council issued four further resolutions on children and armed conflict: resolutions 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004) and 1612 (2005); these reiterate points made in earlier resolutions, as well as providing new initiatives. The resolutions include requests to States, where child soldiers are used, for action plans regarding their efforts to end the practice, and express the Security Council's determination to consider targeted measures against parties that fail to show progress in ending the use of child soldiers. The 2005 resolution (S/RES/1314(2000)) requested a formal monitoring and reporting mechanism to document abuses against children in armed conflict (specifically including killing and maiming of children, recruiting or using child soldiers, attacks against schools or hospitals, sexual violence, abduction and denial of humanitarian access to children). It also established a Security Council working group to consider such abuses and make recommendations for further action by the Security Council.

Comments by the Committee on the Rights of the Child

At its first session in September/October 1991 the Committee on the Rights of the Child decided to hold its first Day of General Discussion on "Children in armed conflict", enabling the Committee to make various comments that aid interpretation of article 38 and of the rest of the Convention in relation to armed conflict. The Committee proposed, in examining States Parties' reports, that it would:

- welcome declarations made by some States Parties that they would not recruit under-18-year-olds;
- emphasize the need for information on the legislation and practice of States Parties on the application of article 38;
- seek information under article 41 on whether the most conducive norms are applied, or encourage development of more protective provisions in national law;
- encourage States that allow recruitment under 18 to consider how this situation takes the best interests of the child as the primary consideration;
- emphasize and encourage all States to consider in continuous monitoring whether all

necessary and appropriate measures have been adopted to ensure the full realization of the rights of the child to all children under their jurisdiction.

(Committee on the Rights of the Child, Report on the second session, September/October 1992, CRC/C/10, paras. 61 *et seq.*)

The Committee also highlighted the important role education played in conflict resolution, and this point is also made in the Committee's first General Comment on article 29(1) "The aims of education":

"The values embodied in article 29(1) are relevant to children living in zones of peace but they are even more important for those living in situations of conflict or emergency. As the Dakar Framework for Action notes, it is important in the context of education systems affected by conflict, natural calamities and instability that educational programmes be conducted in ways that promote mutual understanding, peace and tolerance, and that help to prevent violence and conflict..." (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 16)

The Committee's General Comment No. 3 on "HIV/AIDS and the rights of the child" highlights the vulnerability of children in armed conflict:

"... The Committee considers that the relationship between HIV/AIDS and the violence or abuse suffered by children in the context of war and armed conflict requires specific attention. Measures to prevent violence and abuse in these situations are critical, and States Parties must ensure the incorporation of HIV/AIDS and child rights issues in addressing and supporting children – girls and boys – who were used by military or other uniformed personnel to provide domestic help or sexual services, or who are internally displaced or living in refugee camps. In keeping with States Parties' obligations, including under articles 38 and 39 of the Convention, active information campaigns, combined with the counselling of children and mechanisms for the prevention and early detection of violence and abuse, must be put in place within conflict- and disaster-affected regions, and must form part of national and community responses to HIV/AIDS." (Committee on the Rights of the Child, General Comment No. 3, 2003, CRC/GC/2003/3, para. 38)

The Committee's General Comment No. 6 on "Treatment of unaccompanied and separated children outside their country of origin" states that such children who are fleeing armed conflict are entitled to refugee status and that child soldiers should be treated as victims, not criminals:

“Child soldiers should be considered primarily as victims of armed conflict. Former child soldiers, who often find themselves unaccompanied or separated at the cessation of the conflict or following defection, shall be given all the necessary support services to enable reintegration into normal life, including necessary psychosocial counselling. Such children shall be identified and demobilized on a priority basis during any identification and separation operation. Child soldiers, in particular, those who are unaccompanied or separated, should not normally be interned, but rather, benefit from special protection and assistance measures, in particular as regards their demobilization and rehabilitation. Particular efforts must be made to provide support and facilitate the reintegration of girls who have been associated with the military, either as combatants or in any other capacity. “If, under certain circumstances, exceptional internment of a child soldier over the age of 15 years is unavoidable and in compliance with international human rights and humanitarian law, for example, where she or he poses a serious security threat, the conditions of such internment should be in conformity with international standards, including article 37 of the Convention and those pertaining to juvenile justice, and should not preclude any tracing efforts and priority participation in rehabilitation programmes.

“As under-age recruitment and participation in hostilities entails a high risk of irreparable harm involving fundamental human rights, including the right to life, state obligations deriving from article 38 of the Convention, in conjunction with articles 3 and 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, entail extraterritorial effects and States shall refrain from returning a child in any manner whatsoever to the borders of a State where there is a real risk of under-age recruitment or participation, directly or indirectly, in hostilities.

“Reminding States of the need for age and gender-sensitive asylum procedures and an age and gender-sensitive interpretation of the refugee definition, the Committee highlights that under-age recruitment (including of girls for sexual services or forced marriage with the military) and direct or indirect participation in hostilities constitute a serious human rights violation and thereby persecution, and should lead to the granting of refugee status where the well-founded fear of such recruitment or participation in hostilities is based on ‘reasons of race, religion, nationality, membership of a particular social group or political opinion’ (article 1A (2), 1951 Refugee Convention).” (Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, paras. 56 to 59)

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Armed conflicts are also a major cause of disability, as the Committee notes in its General Comment No. 9 on “The rights of children with disabilities”:

“Armed conflicts and their aftermath, including availability of and accessibility to small arms and light weapons, are also major causes of disabilities. States Parties are obliged to take all necessary measures to protect children from the detrimental effects of war and armed violence and to ensure that children affected by armed conflict have access to adequate health and social services, including psychosocial recovery and social reintegration. In particular, the Committee stresses the importance of educating children, parents and the public at large about the dangers of landmines and unexploded ordnance in order to prevent injury and death. It is crucial that States Parties continue to locate landmines and unexploded ordnance, take measures to keep children away from suspected areas, and strengthen their de-mining activities and, when appropriate, seek the necessary technical and financial support within a framework of international cooperation, including from United Nations agencies.” (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, para. 55)

Results of armed conflict

The *Guidelines for Periodic Reports (Revised 2005)* asks States to submit the following disaggregated data on article 38:

- “... (a) Number and percentage of persons under 18 who are recruited or enlist voluntarily in the armed forces and proportion of those who participate in hostilities;
- Number and percentage of children who have been demobilized and reintegrated into their communities; with the proportion of those who have returned to school and been reunified with their families;
- Number and percentage of child casualties due to armed conflict;
- Number of children who receive humanitarian assistance;
- Number of children who receive medical and/or psychological treatment as a consequence of armed conflict.” (CRC/C/58/Rev.1, para. 22, p. 16)

During its examination of States Parties’ reports, the Committee has frequently had cause to comment at the direct and indirect effects of armed conflict on children. For example:

“The Committee is highly alarmed by the number of children who were killed in armed conflicts in the State Party. The Committee





notes with grave concern the reports of abduction and forcible conscription of children by the armed groups for political indoctrination and for use as combatants, informants, cooks or porters and as human shields. The Committee is equally concerned that Government forces target under-18s suspected of being members of the armed groups and about the highly alarming reports of disappearances and arbitrary detention and of Government forces allegedly using children as spies and messengers. The Committee is also deeply concerned that there are reports of detention of children under the 2004 amendment to the Terrorist and Disruptive Activities (Control and Punishment) Ordinance. The Committee is concerned at the direct effects of this violence on child victims, including child combatants, and about the severe physical and psychological trauma inflicted upon them. The Committee also expresses concern about children who were separated due to the conflict, including children who have fled to India, and that little efforts have been taken by the State Party to reunite these families. The Committee is also concerned about the negative impact of the armed conflict on food supplies, education and health care.” (Nepal CRC/C/15/Add.261, para. 81)

“The Committee, while welcoming the ratification of the Optional Protocol to the CRC on the involvement of children in armed conflict, is seriously concerned over the grave consequences the internal armed conflict has on children in Colombia, causing them serious physical and mental injury and denying them the enjoyment of their most basic rights. The Committee notes as positive the development of educational kits distributed to schools in high-risk conflict areas by the army, as well as certain efforts to improve the reintegration and recovery of demobilized child soldiers. However, the Committee considers that considerable measures for demobilized and captured child soldiers remain lacking. In particular, the Committee is concerned over:

- (a) large-scale recruitment of children by illegal armed groups for combat purposes and also as sex slaves;
- (b) interrogation of captured and demobilized child soldiers and delays by the military in handing them over to civilian authorities in compliance with the time frame of maximum 36 hours stipulated in the national legislation;
- (c) the use of children by the army for intelligence purposes;
- (d) inadequate social reintegration, rehabilitation and reparations available for demobilized child soldiers;
- (e) the number of children who have become victims of landmines;
- (f) the failure of the current legal framework for the ongoing negotiation with the

paramilitaries to take into account the basic principles of truth, justice and reparations for the victims;

(g) general lack of adequate transparency in consideration of aspects relating to children in the negotiations with illegal armed groups, resulting in continuous impunity for those responsible for recruitment of child soldiers.” (Colombia CRC/C/COL/CO/3, para. 80)

Armed conflicts cause population movements. People flee in large numbers, becoming refugees or internally displaced people. The study on the *Impact of Armed Conflict on Children* suggests that “at least half of all refugees and displaced people are children. At a crucial and vulnerable time in their lives, they have been brutally uprooted and exposed to danger and insecurity. In the course of displacement, millions of children have been separated from their families, physically abused, exploited and abducted into military groups, or they have perished from hunger and disease” (A/51/306, para. 66). Article 22 of the Convention covers the particular rights of refugee children (see page 305). Technically refugees are people who have fled across national frontiers, but the Committee is equally concerned about children who have been displaced within their own country:

“The Committee is deeply concerned by the impact of communal conflicts on children in Nigeria. The Committee is alarmed by the reports of indiscriminate extrajudicial killings in these conflicts, where children as well as adults are routinely killed, shot to death and burnt. The Committee is seriously concerned at the direct effects of this violence on child victims, including child combatants, and about the severe physical and psychological trauma inflicted upon them. The Committee notes that the State Party has signed but not yet ratified the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict.” (Nigeria CRC/C/15/Add.257, para. 65)

“The Committee remains concerned that children living in Chechnya and the Northern Caucasus (and in particular internally displaced children) remain very deeply affected by the conflict, in particular with regard to their rights to education and health. The Committee is also concerned about reported cases of arrests and disappearances by security agents of young persons suspected of being associated with insurgency groups. The Committee is concerned that there has been limited identification and marking of mined areas, or efforts to clear mines, notwithstanding the recent ratification by the State Party of Protocol II, as amended, to the Convention on Prohibitions or Restrictions

on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.” (Russian Federation CRC/C/RUS/CO/3, para. 68)

The Graça Machel study notes that children affected by armed conflict are often also victims of sexual abuse and exploitation: “Rape poses a continual threat to women and girls during armed conflict, as do other forms of gender-based violence, including prostitution, sexual humiliation and mutilation, trafficking and domestic violence...” (A/51/306, paras. 91 *et seq.*) The study also provides detailed recommendations for preventing sexual exploitation and gender-based violence (for further discussion see article 34, page 513). The Rome Statute of the International Criminal Court (see below, page 584) includes rape, sexual slavery, enforced prostitution and other grave forms of sexual violence within its definition of crimes against humanity (article 7).

Recruitment of under-18-year-olds

The Committee has emphasized since 1992 that it is of the opinion that the Convention requires protection of all children under 18 from direct or indirect involvement in hostilities and that no under-18-year-olds should be recruited into armed forces (Committee on the Rights of the Child, General Discussion on children in armed conflict, Report on the second session, September/October 1992, CRC/C/10, para. 67 and preamble to draft Optional Protocol). This has been reflected in comments to many States, severely condemning any recruitment of child soldiers. For example:

“The Committee is deeply concerned that about one third of the annual intake of recruits into the armed forces are below the age of 18 years, that the armed services target young people and that those recruited are required to serve for a minimum period of four years, increasing to six years in the case of very young recruits.” (United Kingdom CRC/C/15/Add.188, para. 53)

“... While noting with appreciation that the minimum age of compulsory recruitment is 19 years, the Committee notes with concern that the minimum age of voluntary recruitment, both in regular armed forces and in unregulated paramilitary forces, is unclear. The alleged cases of persons under 18 years of age being used by Government-allied paramilitary forces and armed political groups are cause for serious concern.” (Algeria CRC/C/15/Add.269, para. 70)

“... The Committee is also concerned at the regulation ‘On enrolling under-age citizens of the Russian Federation as wards of military

units and providing them with essential allowances’, which permits boys between the ages of 14 and 16 to be voluntarily recruited and attached to military units.” (Russian Federation CRC/C/RUS/CO/3, para. 70)

As indicated previously (page 574), a dispute over the language of article 38 and the protection afforded to 15- to 18-year-olds took place in the Working Group which drafted the Convention.

Article 38 refers to recruitment rather than to conscription. Article 38, as drafted, permits the recruitment of under-18-year-olds, but conscription is not mentioned and should not form part of state law or practice. Compelling children (i.e., all under-18-year-olds) to join armed forces is identified as one of the worst forms of child labour under article 3 of ILO Convention (No.182) and arguable amounts to abduction in breach of article 35.

A number of States made declarations, welcomed by the Committee, which expressed concern that article 38 did not prohibit the involvement in hostilities and the recruitment into armed forces of all under-18-year-olds. For example:

“The Principality of Andorra deplores the fact that the Convention on the Rights of the Child does not prohibit the use of children in armed conflicts. It also disagrees with the provisions of article 38, paragraphs 2 and 3, concerning the participation and recruitment of children from the age of 15.”

“Concerning article 38 of the Convention, the Argentine Republic declares that it would have liked the Convention categorically to prohibit the use of children in armed conflicts; such a prohibition exists in its domestic law which, by virtue of article 41 of the Convention, it shall continue to apply in this regard.”

“Austria will not make any use of the possibility provided for in article 38, paragraph 2, to determine an age limit of 15 years for taking part in hostilities as this rule is incompatible with article 3, paragraph 1, which determines that the best interests of the child shall be a primary consideration...” (Also declarations from Colombia, Germany, Netherlands, Poland, Spain, Uruguay – CRC/C/2/Rev.8, pp. 13 to 43.)

Recruitment does not necessarily mean that children are deployed as soldiers. The study on the *Impact of Armed Conflict on Children* notes that children are also forced to serve in supporting roles, as cooks, porters, messengers and spies. Most are adolescents, though many child soldiers are 10 years old or younger: “While the majority





are boys, girls also are recruited. The children most likely to become soldiers are those from impoverished and marginalized backgrounds and those who have become separated from their families.” (A/51/306, paras. 34 and 35. The study provides a detailed commentary and proposals to end recruitment of children.) Since the study, the Committee has expressed grave concern about this practice, which continues in many zones of conflict. For example:

“... the Committee expresses its extremely deep consternation at the very high numbers of children who have been forcibly recruited into armed forces and armed groups, by all parties involved in the conflict, including children as young as nine years old. The Committee is also concerned that these children have been forced to carry goods and weapons, guard the checkpoints and often fight in the frontline, while girls have been raped, forced to become servants of the soldiers as well as become combatants...”
(Liberia CRC/C/15/Add.236, para. 58)

Principles concerning recruitment

A seminar on prevention of recruitment of children into the armed forces and demobilization and social reintegration of child soldiers in Africa produced a set of principles in 1997 (the “Cape Town Principles”) adopted by participants in a seminar organized by UNICEF and the NGO Subgroup of the NGO Group on the Convention on the Rights of the Child. These propose that 18 should be the minimum age for any participation in hostilities and for all forms of recruitment into all armed forces and armed groups, and that the Optional Protocol to the Convention (see page 659) should be supported and ratified.

In 2006 UNICEF led a process to revise the Cape Town Principles which resulted in two documents: *The Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups* (“the Paris Commitments”) and a complementary and lengthier document entitled *The Paris Principles – Principles and guidelines on children associated with armed forces or armed groups* (UNICEF, February 2007; see also www.unicef.org/media/files/ParisPrinciples310107English.pdf). These guidelines provide advice on specific groups of children such as girls, children with disabilities and refugee or internally displaced children. As regards war crimes, the guidelines advocate no impunity for adults who have recruited or used children in warfare, but urge States to avoid the prosecution of children. Prevention, family reunification and rehabilitation are also given substantial attention.

Prosecution for war crimes

The International Criminal Court

The Rome Statute of the International Criminal Court, adopted on 17 July 1998, characterizes as a war crime conscripting or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities in international armed conflicts. The definition also applies to conscription or enlisting of under-15-year-olds into armed forces or groups in non-international armed conflicts (article 8).

The United Nations first recognized the need for an international criminal court in a General Assembly resolution in 1948 (A/RES/260(III), 9 December 1948). In December 1989, in response to a request from Trinidad and Tobago, the General Assembly asked the International Law Commission to resume work on establishment of an international criminal court. In 1993, the conflict in the former Yugoslavia erupted and war crimes, crimes against humanity and genocide again commanded international attention. The United Nations Security Council established the *ad hoc* International Criminal Tribunal for the former Yugoslavia. In 1994 the International Law Commission submitted a draft statute for an international criminal court to the General Assembly. A Preparatory Committee on the Establishment of an International Criminal Court met from 1996 to 1998, when it finalized a draft. The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court met in Rome, Italy, from 15 June to 17 July 1998 to finalize and adopt the Statute of the Court. It entered into force on 11 April 2002 once 60 States had ratified it. For full details and text of the Statute, see www.un.org/law/icc.

The Court, situated at the Hague, has jurisdiction over genocide, crimes against humanity, war crimes and the crime of aggression, which are defined in detail in the Statute, with various references to children. For example, “genocide” is defined as various acts “committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group”. These acts include “imposing measures intended to prevent births within the group” and “forcibly transferring children of the group to another group” (article 6). Other elements of the definitions intended to reinforce protection of civilians are particularly relevant to children.

By the end of 2006 the International Criminal Court had issued arrest warrants for several commanders of armed groups for the war crime of recruiting or using children in hostilities.

Prosecutions by States Parties

The Committee is concerned about instances of children failing to receive compensation or redress for the sufferings they have experienced in conflict (see, for example Croatia CRC/C/15/Add.243, paras. 84 and 85, and Israel CRC/C/15/Add.195, paras. 58 and 59). It also recommends that States prosecute those alleged to have violated children's rights during conflicts (for example Indonesia CRC/C/15/Add.223, para. 243).

The issue of whether or not to try children who have committed war crimes, or crimes against humanity while participating in armed conflict, has created substantial controversy, in part since these almost invariably have arisen because they have been illegally conscripted and forced to perpetrate these acts. The International Criminal Court specifically excluded children under the age of 18 from its jurisdiction, but some States have retained this option.

The Committee raised concerns about children charged with war crimes with Rwanda:

"The Committee is extremely concerned that persons below the age of 18 at the time of their alleged war crime have not yet been tried, have been detained in very poor conditions, some for a very long time, and are not provided with appropriate services to promote their rehabilitation. The Committee notes the establishment of gacaca courts but is deeply concerned that no specific procedure has been established for those who were under 18 at the time of their alleged crime, as required by article 40, paragraph 3, of the Convention, and are still in what could be considered as pre-trial detention.

"In the light of articles 37, 40 and 39 of the Convention and other relevant international standards, the Committee recommends that the State Party take all necessary measures to complete within six months all pending legal proceedings against persons who were below the age of 18 at the time they allegedly committed war crimes." (Rwanda CRC/C/15/Add.234, paras. 70 and 71)

Articles 37 and 40 address the rights of children who are alleged to have committed offences (see pages 547 and 601). These articles, taken together with the United Nations rules and guidelines on juvenile justice and the Committee's General Comments No. 6 on "Treatment of unaccompanied and separated children outside their country of origin" (para. 56) and No. 10 on "Children's rights in Juvenile Justice" (para. 4), make clear that retribution has no place in the treatment of child soldiers and that, although such children may be held accountable for crimes, any hearings to determine responsibility must be fair and entirely separate from the adult justice system

and that the subsequent treatment of the child must be focused on achieving his or her rehabilitation, with deprivation of liberty used only as a last resort for the shortest appropriate time.

Anti-personnel mines

The Committee and other bodies have noted the devastating effects that anti-personnel landmines have had on children, and congratulate States that have aided the international campaign against them.

In October 1996, the Canadian Government initiated what has been labelled "The Ottawa process", at an international conference in Ottawa, inviting all Governments to return to Ottawa in December 1997 to sign a legally binding treaty banning anti-personnel landmines. Preparatory meetings were held in Vienna, Bonn and Brussels during the Spring of 1997 and, at a diplomatic conference in Oslo in September 1997, 89 Governments agreed on a draft Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction. This Convention opened for signature in Ottawa on 3 December 1997 and formally came into effect in March 1999 following the first 40 ratifications.

The Convention's most significant provisions are:

- a complete prohibition on the use, stockpiling, production and transfer of anti-personnel mines (APMs), aside from the continued use of anti-vehicle mines equipped with anti-handling devices and the use of APMs for training in mine clearance;
- stockpiled APMs to be destroyed within four years of entry into force;
- APMs within minefields to be cleared within 10 years of entry into force (States Parties may, however, be granted an extension of the time period, with an additional 10 years);
- an obligation to report total numbers of stockpiled APMs, location of minefields, etc.;
- States Parties in a position to do so to provide assistance with mine clearance, rehabilitation of mine victims, etc.;
- a simple verification procedure, including the possibility of sending out fact-finding missions in cases of suspected violations of the Convention.

The Committee on the Rights of the Child encourages States Parties to become parties





to this Convention and to take priority action on any unexploded ordnance (including cluster bombs as well as mines), given the particular vulnerability of children to their lethal effects (see also the Committee's General Comment No. 9 on "The rights of children with disabilities" (CRC/C/GC/9, paras. 23, 55 and 78). For example:

"While taking into consideration the efforts made by the State Party, the Committee notes with concern the situation with respect to landmines, and the threat they pose to the survival and development of children. The Committee stresses the importance of educating parents, children and the general public about the dangers of landmines and of implementing rehabilitation programmes for victims of landmines. The Committee recommends that the State Party review the situation with respect to landmines within a framework of international cooperation, including from United Nations agencies. The Committee further suggests that the State Party become a party to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and of Their Destruction (1997)." (Iraq CRC/C/15/Add.94, para. 28)

"The Committee expresses grave concern at the significant number of landmines still in the State Party, especially in the western regions along the border zones. The Committee notes with concern the insufficient efforts made by the State Party to locate and clear these landmines and to protect children in this regard. Concern is also expressed about the inadequate programmes to facilitate the care and rehabilitation of child victims of landmines and the insufficient efforts to raise awareness and to prevent accidents involving children and landmines.

"The Committee strongly recommends that the State Party take all appropriate measures to

locate and clear the landmines in its territory, and promote awareness about the potential dangers. The State Party is recommended to undertake a study to determine the impact of landmines in its territory, particularly as this affects children living in the western regions along the border. The Committee recommends that the State Party reinforce its efforts to accede to the Convention on the Prohibition of the Use, Production, Transfer and Stockpiling of Anti-Personnel Landmines and on Their Destruction, which it signed in December 1997. Additionally, the State Party is encouraged to seek technical cooperation with the United Nations Mine Action Service (UNMAS), among others." (Georgia CRC/C/15/Add.124, paras. 58 and 59)

"Although the number is constantly decreasing, the Committee is concerned at the information that between 1992 and August 2000 a total of 4,371 persons had been victims of landmines, including about 300 children. The Committee is also concerned at the information that there are still 1 million mines in approximately 30,000 minefields throughout the country, including around schools and in areas where children play and that, according to Red Cross sources, every month 50 children suffer from the consequences of this situation. Furthermore, the Committee is concerned at the situation of children who were victims of the armed conflict, in particular with regard to the consequences of the conflict on their physical and psychological status.

"The Committee recommends the State Party to continue carrying out mine-awareness campaigns, undertake as a matter of priority demining programmes and extend the psychological and social assistance to children who have been affected by the explosion of mines and other consequences of the armed conflict." (Bosnia and Herzegovina CRC/C/15/Add.260, paras. 63 and 64)

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

Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 38, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 38 is relevant to **departments of defence, foreign affairs, home affairs, education, social welfare**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 38 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 38 likely to include training for **all members of armed forces, including peacekeeping forces, social workers, aid workers, psychologists and health workers**)?

• Specific issues in implementing article 38

Has the State ratified/acceded to

- the four Geneva Conventions of 1949?
- Additional Protocol I?
- Additional Protocol II?
- the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction?
- the Optional Protocol to the Convention on the involvement of children in armed conflict?
- other international instruments relevant to the protection of children affected by armed conflict?
- Has the State taken appropriate steps to ensure that children under the age of 15 do not take a direct part in hostilities?
- Has the State taken appropriate steps to ensure that children under the age of 18 do not take a direct or indirect part in hostilities?
- Has the State ensured that no child under the age of 18 is conscripted into the armed forces?

How to use the checklist, see page XIX



- Has the State adopted legislation and other appropriate measures
- to prevent the recruitment of children who have not attained the age of 15 into the armed forces?
 - to give priority to the oldest in recruiting any child under the age of 18?
 - to prevent the recruitment of any child under 18 into the armed forces?
- Has the State taken measures to prohibit and prevent the recruitment of any child under the age of 18 by non-government forces?
- Has the State ensured that military schools do not recruit students below the age of 18?
- Has the State ensured that any military schools which do recruit students below the age of 18 are supervised by the ministry of education rather than of defence?
- Has the State ensured that military schools respect the aims for education set out in article 29 of the Convention?
- Has the State taken all feasible measures to ensure protection and care of all children affected by armed conflict?
- Has the State reviewed and taken appropriate action on the recommendations of the study on the *Impact of Armed Conflict on Children*?
- In relation to article 38(4) of the Convention, has the State taken national, bilateral and international action to protect children from anti-personnel mines?

Reminder: The Convention is indivisible and its articles interdependent. Article 38 should not be considered in isolation.

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground

Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children

Article 6: right to life and maximum possible survival and development

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

Closely related articles

Articles whose implementation is particularly related to that of article 38 include:

Article 19: protection from all forms of violence

Article 22: refugee children

Article 29: aims of education

Article 34: protection from sexual exploitation

Article 35: abduction and trafficking

Article 37: protection from torture, cruel, inhuman or degrading treatment or punishment

Article 39: rehabilitative care for victims of armed conflict

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Rehabilitation of child victims

article

39

Text of Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 39 requires measures to help child victims of:

- any form of violence, neglect, exploitation or abuse (for example, as detailed in articles 19, 32, 33, 34, 35, 36);
- torture or any other form of cruel, inhuman or degrading treatment or punishment (article 37);
- armed conflict (article 38).

The article provides that recovery and reintegration must take place in an environment that fosters the health, self-respect and dignity of the child. The general principles of the Convention on the Rights of the Child require that such measures must be available without discrimination to all child victims; the best interests of the child must be a primary consideration; the maximum survival and development of the child must be ensured; and the views of the child should be respected – for example in planning and implementing programmes, as well as in individual cases. Other rights in the Convention, to health and health care services (article 24), to education

(article 28) and to an adequate standard of living (article 27) are relevant to this article's implementation, as is the obligation under article 20 to provide special care and assistance to children temporarily or permanently deprived of their family environment.

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted in 2000, requires States Parties to take appropriate measures to protect the rights and interests of child victims of the practices prohibited under the Protocol, including for their rehabilitation. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, also adopted in 2000, includes a section on the protection of victims of trafficking.

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict also requires ratifying States to

Summary



give children appropriate assistance, where necessary, for their recovery and social integration.

In Concluding Observations on States Parties' reports, the Committee has frequently grouped article 39 with articles 37 and 40. However, the Committee has indicated that measures are required under article 39 for all children who are victims of the treatment or punishment prohibited in article 37 whether it occurs within the family, in institutions or the community. Article 40(1) requires that all children who come within the scope of the juvenile justice system ("alleged as, accused of, or recognized as having infringed the penal law") must be treated in a manner consistent with "promoting the child's reintegration and the child's assuming a constructive role in society". Article 19, requiring the protection of children from all forms of physical or mental violence, also mentions treatment and follow-up. Article 25 provides children who have been placed for care, protection or treatment – including for purposes of rehabilitation – with a right to a periodic review.

The Committee has indicated that the wording of article 39 requires consideration of a wide range of potential child victims. In addition to the situations specifically mentioned in article 39, the Committee has referred to issues such as victims of violence, refugee children (article 22), child labour and forced labour (article 32), abuse and trafficking of drugs (article 33), family conflict (article 9) and the sale and trafficking of children (article 35), as well as children involved in the system of juvenile justice (articles 37 and 40). ■

Rehabilitating child victims

The report of the United Nations Secretary-General's Study on Violence Against Children recommends that States "... should provide accessible, child-sensitive and universal health and social services, including pre-hospital and emergency care, legal assistance to children and, where appropriate, their families when violence is detected or disclosed. Health, criminal justice and social service systems should be designed to meet the special needs of children." (Report of the independent expert for the United Nations study on violence against children, United Nations, General Assembly, sixty-first session, August 2006, A/61/299, para. 102)

The complementary *World Report on Violence against Children* notes: "The impact of violence can stay with its victims throughout their lifetime. Early access to quality support services can help to mitigate the impact of the event on the victim,

including preventing longer term consequences such as becoming a perpetrator of violence." (Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006, p. 337)

The Committee's *Guidelines for Periodic Reports (Revised 2005)* requests data on rehabilitation measures across a range of issues, asking States to provide it with the number of children who:

- receive medical and/or psychological treatment as a consequence of armed conflict;
- participate in juvenile justice programmes of special rehabilitation;
- are employed in the worst forms of child labour and have access to recovery and reintegration assistance, including free basic education and/or vocational training;
- receive treatment assistance and recovery services as a result of substance abuse
- have access to rehabilitation programmes having been involved in sexual exploitation including prostitution, pornography and trafficking (see page 703, paras. 22, 23 and 25 to 27).

The Committee on the Rights of the Child has frequently commented on the lack of adequate measures to rehabilitate child victims. For example, in its Concluding Observations to Senegal the Committee recommended rehabilitative measures in relation to four different groups of child victims:

"The Committee recommends that the State Party take all appropriate measures, including through international cooperation, if necessary, to address the physical, psychological and social reintegration needs of children affected by the conflict..."

"The Committee recommends that the State Party address the rights and needs of street children and begging children and facilitate their reintegration into society by... developing and implementing with the active involvement of street and begging children and NGOs a comprehensive policy which should address the root causes, in order to discourage, prevent and reduce child begging, and which should provide begging and street children with necessary protection, adequate health-care services, education and other social reintegration services."

"The Committee recommends that the State Party... reinforce legal measures protecting children victims of sexual exploitation, including trafficking, pornography, prostitution and sex tourism; prioritize recovery assistance and ensure that education and training as well as psychological assistance and counselling are provided to victims, and

avoid that victims who cannot return to their families are institutionalized.

“The Committee recommends that the State Party take measures to prevent and reduce alcohol and drug abuse among children and to support recovery and social reintegration programmes for child victims of drug and alcohol abuse.” (Senegal CRC/C/SEN/CO/2, paras. 57, 59, 65 and 67)

The Committee emphasizes that there should be no discrimination in the provision of rehabilitative services to child victims, for example between children living in rural and urban areas:

“Regional disparities, including differences between rural and urban areas, exist in the provision of rehabilitation services for abused children. The Committee recommends that the State Party take all appropriate measures to implement fully the right of the child to physical and psychological recovery and social reintegration, in accordance with article 39 of the Convention.” (Austria CRC/C/15/Add.98, para. 21)

The Committee expressed continued concern about the geographical variations in services to children in Austria at its Second Report (Austria CRC/C/15/Add. 251, para. 10).

Following its Day of General Discussion on “State violence against children” (September 2000), the Committee adopted recommendations on rehabilitation of child victims and the provision of counselling, advice and support (paras. 27 and 28). It also emphasized the importance of ensuring that children who are in need of protection are not considered as offenders (for example, in legislation dealing with abandonment, vagrancy, prostitution, migrant status, truancy and runaways) but are dealt with under child protection mechanisms (Report on the twenty-fifth session, September/October 2000, CRC/C/100, para. 688.9). In addition, in its Concluding Observations on State Parties’ reports the Committee expresses concern about any child rehabilitation measures that penalize children more than they help them, such as Brunei Darussalam’s treatment of children who abuse drugs or Bangladesh’s treatment of children who are the victims of abuse:

“The Committee notes the State Party’s non-punitive approach to victims of drug abuse, but is concerned that children abusing drugs may be placed in a closed institution for a period of up to three years.” (Brunei Darussalam CRC/C/15/Add.219, para. 53)

“The Committee is concerned ... that child victims of abuse and/or exploitation are placed in ‘safe custody’, which may result in depriving them of their liberty for as long as 10 years.” (Bangladesh CRC/C/15/Add 221, para. 49)

In relation to drug abuse, many countries have inadequate rehabilitative services even for adults, and urgently need to develop services tailored specifically for children (see article 33, page 503).

Child victims of neglect, exploitation or abuse

Various articles of the Convention provide protective rights, requiring States to take a range of actions to prevent violence, neglect and exploitation of children. This is further emphasized in the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (see page 669). States Parties to the Protocol must adopt “appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process...” (article 8) and take a range of actions to protect the victims of violence, neglect and exploitation (see box, page 592.)

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, also adopted in 2000, includes a section on “Assistance to and protection of victims of trafficking in persons”, requiring “assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders...” (article 6.2 (b), see box page 594).

The Agenda for Action adopted by the First World Congress against Commercial Sexual Exploitation of Children (Stockholm, Sweden, 1996, endorsed at the Second World Congress in Yokohama, Japan, in 2001) includes a section on “Recovery and Reintegration”, emphasizing that a non-punitive approach should be adopted to child victims of commercial sexual exploitation and proposing:

- victims and their families should receive social, medical and psychological counselling and other support;
- medical personnel, teachers, social workers and relevant NGOs helping child victims should receive gender-sensitive training;
- effective action to prevent and remove social stigmatization of child victims and their families;
- the facilitation of recovery and reintegration whenever possible in families and communities;
- promotion of alternative means of livelihood for child victims and their families so as to prevent further commercial sexual exploitation. (A/51/385, para. 5).



Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (adopted in 2000)

Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:
 - (a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
 - (b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
 - (c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
 - (d) Providing appropriate support services to child victims throughout the legal process;
 - (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
 - (f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
 - (g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.
2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.
3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.
4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.
5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.
6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

(For full text, see Appendix 2, page 695. For commentary, see page 669.)

Official systems that aim to protect children must also promote their recovery. In 2005 the United Nations Economic and Social Council adopted the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (resolution 2005/20) (see page 673). These require that child victims involved in criminal or judicial procedures against alleged abusers are treated with dignity and compassion, protected from discrim-

ination, hardship or danger to themselves and offered reparation.

The Committee's General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment" stresses not only that prosecutions should be child sensitive, but also that:



"It is the Committee's view that prosecution and other formal interventions (for example, to remove the child or remove the perpetrator) should only proceed when they are regarded both as necessary to protect the child from significant harm and as being in the best interests of the affected child. The affected child's views should be given due weight, according to his or her age and maturity."

(Committee on the Rights of the Child, General Comment No. 8, 2006, CRC/C/GC/8, paras. 41 and 43)

The Committee has noted the importance of respect for the child victim's right to privacy, in particular in cases involving abuse including sexual exploitation, and the role of the media in respecting privacy (for discussion, see article 16, page 208). It stresses the need for gender-sensitive rehabilitation undertaken by trained professionals:

"The Committee reiterates its concern ... that victims of sexual exploitation do not have access to appropriate recovery and assistance services."

"The Committee recommends that the State Party... increase the number of trained professionals providing psychological counselling and other recovery services to victims..." (Uzbekistan CRC/C/UZB/CO/2, paras. 67 and 68)

"The Committee ... remains concerned about ... the insufficient programmes for the physical and psychological recovery and social rehabilitation of child victims of such abuse and exploitation."

"... the Committee recommends that the State Party... implement appropriate gender- and child-sensitive policies and programmes to prevent it and to rehabilitate child victims in accordance with the Declaration and Agenda for Action and the Global Commitment adopted at the 1996 and 2001 World Congresses against Commercial Sexual Exploitation of Children." (Rwanda CRC/C/715/Add. 234, paras. 66 and 67)

Children with disabilities, highly vulnerable to abuse, need appropriate forms of rehabilitation. The Convention on the Rights of Persons with Disabilities provides: "States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs." (Article 16(4))

Child victims of economic exploitation

Following its Day of General Discussion on the "Economic exploitation of children", the Committee on the Rights of the Child produced a series of recommendations. These recognized that all rights in the Convention are indivisible and interrelated and that action to prevent and combat economic exploitation of children must take place within the framework of the Convention's general principles (articles 2, 3, 6 and 12). An adequate legal framework and necessary measures of implementation must be developed in conformity with the principles and provisions (see also article 32, page 479):

"Such measures will strengthen the prevention of situations of economic exploitation and of their detrimental effects on the lives of children, should be aimed at reinforcing the system of children's protection and will promote the physical and psychological recovery and social reintegration of children victims of any form of economic exploitation, in an environment which fosters the health, self-respect and dignity of the child."

In particular, the Committee recommended:

"States Parties must also take measures to ensure the rehabilitation of children who, as a result of economic exploitation, are exposed to serious physical and moral danger. It is essential to provide these children with the necessary social and medical assistance and to envisage social reintegration programmes for them in the light of article 39 of the Convention on the Rights of the Child."

(Committee on the Rights of the Child, Report on the fifth session, January 1994, CRC/C/24, pp. 39 and 43)

The International Labour Office (ILO), in its handbook *Child labour: Targeting the intolerable*, suggests: "A child's withdrawal from work should be accompanied by a whole range of supportive measures. This is especially important if children have been stunted in their development because they were bonded, have worked practically since they were toddlers, have been prostituted or have been living and working on the streets without their families or without any stable social environment. In addition to education, training, health services and nutrition, these children need to be provided with intensive counselling, a safe environment, and often legal aid. To this end, a number of action programmes for these children have set up drop-in centres where they can stay and recuperate.

"The evidence has shown that these children need a range of professional services, from social



Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted in 2000)

Article 6

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, *inter alia*, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - (a) Appropriate housing;
 - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
 - (c) Medical, psychological and material assistance; and
 - (d) Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

(For full text, see Appendix 4, page 761.)

workers and family or child therapists to psychiatrists. Volunteers or community workers also play an important part, but their work is very taxing. There is a very high turnover of field workers, and therefore they need special training and guidance. Cooperation with the police is often required, too, so that 'rehabilitated' children are not stigmatized or persecuted. Agencies have also tried with some success to reunite children with their families. In such cases, support has to be extended to the families as well. Comprehensive rehabilitation measures are badly needed and should be provided even if their cost is very high." The ILO also highlights the severe short- and long-term physical and psychological effects of child labour, including in particular hazard-

ous work and forms of forced labour, among them commercial sexual exploitation, requiring specialist and long-term support and rehabilitation (*Child labour: Targeting the intolerable*, International Labour Conference, 86th Session 1998, ILO, Geneva, first published in 1996, pp. 54, and 9 *et seq.*).

As well as children who are economically exploited by adults, in the streets of almost every city in the world many children are to be found who are supporting themselves. As is discussed in relation to article 20, the Committee recommends States take a child-sensitive approach to rehabilitation, which seeks the cooperation and input of the children themselves (see page 286).



Children involved with juvenile justice systems

During its Day of General Discussion on the “Administration of juvenile justice” the Committee noted that

“... insufficient attention was paid to the need for the promotion of an effective system of physical and psychological recovery and social reintegration of the child, in an environment that fostered his or her health, self-respect and dignity.” (Committee on the Rights of the Child, Report on the tenth session, October/November 1995, CRC/C/46, para. 221)

Rehabilitation and social reintegration must be the focus of all juvenile justice systems – retributive sanctions should play no part, though proportionality and the needs of public safety will be considerations (see, for example, General Comment No. 10 on “Children’s rights in Juvenile Justice” (paras. 4 and 25)). As the *World Report on Violence against Children* accompanying the United Nations Study on Violence Against Children recommends: “Governments should ensure that juvenile justice systems for all children up to age 18 are comprehensive, child-focused, and have rehabilitation and social reintegration as their paramount aims.” (Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006, p. 219)

The Committee on the Rights of the Child has promoted the United Nations rules and guidelines relating to juvenile justice as providing relevant standards for the implementation of the Convention, and in particular the implementation of articles 37, 39 and 40. In many cases, it has asked States Parties generally to review their juvenile justice system in the light of these articles, and of the rules and guidelines.

The Committee has made specific proposals in the light of article 39. For example:

“Recognizing the existence of psychological assistance facilities under the auspices of the Centres for Social Work, the Committee, nevertheless, remains concerned at the absence of measures to provide for the physical and psychological recovery and reintegration of children who have been the victims of crime, and of children who have participated in judicial proceedings or who have been confined in institutions.

“In the light of article 39 of the Convention, the Committee recommends that the State Party urgently establish appropriate programmes to provide for the physical and psychological recovery and reintegration of such children and that these mechanisms be used in the administration of juvenile justice.”

*(The former Yugoslav Republic of Macedonia
CRC/C/15/Add.118, paras. 48 and 49)*

The Riyadh Guidelines for the Prevention of Juvenile Delinquency (see page 739) proposes that comprehensive development plans should include victim compensation and assistance programmes, with full participation by young people (para. 9). The Guidelines also notes that schools can usefully serve as resource and referral centres for the provision of medical, counselling and other services to young persons, “particularly those with special needs and suffering from abuse, neglect, victimization and exploitation” (para. 26). Communities should provide, or strengthen where they exist, “a wide range of community-based support measures for young persons, including community development centres, recreational facilities and services to respond to the special problems of children who are at social risk... Special facilities should be set up to provide adequate shelter for young persons who are no longer able to live at home or who do not have homes to live in... Government agencies should take special responsibility and provide necessary services for homeless or street children; information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons.” (Paras. 33, 34 and 38)

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (see page 742) includes a section on “Return to the community”: “All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.” (Rule 79)

“Competent authorities should provide or ensure services to assist juveniles in reestablishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community.” (Rule 80)

Child victims of torture, inhuman or degrading treatment or punishment

Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states: “1. Each State Party shall



ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

“2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.”

The United Nations General Assembly in 1985 adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. It calls on States to provide remedies, including restitution and/or compensation, and necessary material, medical, psychological and social assistance to victims of official abuse, and to provide them with justice – to the extent to which such abuse is a violation of national law (General Assembly resolution 40/34, 29 November 1985, Annex).

The Committee on the Rights of the Child has raised the issue of rehabilitation and compensation for child victims of torture with various States, including, for example, Colombia:

“The Committee recommends that the State Party ensures that all child victims of torture, cruel and degrading treatment are provided access to physical and psychological recovery and social reintegration as well as compensation, giving due consideration to the obligations enshrined in articles 38 and 39 of the Convention.” (Colombia CRC/C/COL/CO/3, para. 51)

Child victims of armed conflict

Following its Day of General Discussion on “Children in armed conflict”, the Committee noted:

“Consideration was particularly given to article 39 of the Convention: different experiences and programmes were brought to the attention of the Committee, underlying the need for resources and goods (namely, food and medicine). Moreover, emphasis was put on the need to consider a coherent plan for recovery and reintegration, to be planned and implemented in a combined effort by United Nations bodies and non-governmental organizations. Attention should be paid to (a) the implementation and monitoring of adequate strategies and (b) the need to reinforce the involvement of the family and the local community in this process.” (Committee on the Rights of the Child, Report on the second session, September/October 1992, CRC/C/10, para. 74)

Protective provisions in the Geneva Conventions and the two Additional Protocols are relevant to

the implementation of article 39 for child victims of armed conflict (see article 38, page 575).

The Optional Protocol to the Convention on the involvement of children in armed conflict requires States Parties to ensure that children recruited or used in hostilities contrary to provisions in the Protocol are demobilized or otherwise released from service; when necessary, States must accord them “appropriate assistance for their physical and psychological recovery, and their social reintegration” (article 6(3), see page 693).

The Committee makes recommendations to States which have experienced or are experiencing armed conflict, often proposing the development of comprehensive programmes of action, which must include help for mental traumas and social and educational reintegration as well as securing just reparations and social reconciliation. For example:

“In the light of articles 38 and 39 of the Convention, the Committee recommends that the State Party ensure respect for human rights and humanitarian law aimed at the protection, care and physical and psychosocial rehabilitation of children affected by armed conflict, notably regarding any participation in hostilities by children. The Committee calls upon the State Party to ensure impartial and thorough investigations in cases of rights violations committed against children and the prompt prosecution of those responsible, and that it provide just and adequate reparation to the victims.” (India CRC/C/15/Add.228, para. 69)

“The Committee urges the State Party to... take every feasible measure to have all child abductees and combatants released and demobilized and to rehabilitate and reintegrate them in society taking into account particularly the specific needs of girls and other vulnerable groups... [and] ... take all necessary measures in cooperation with national and international NGOs and United Nations bodies, such as UNICEF, to address the physical needs of children victims of the armed conflict, in particular the psychological needs of all children affected directly or indirectly by the traumatic experiences of the war. In this regard, the Committee recommends that the State Party develop as quickly as possible a long-term and comprehensive programme of assistance, rehabilitation, reintegration and reconciliation...” (Liberia CRC/C/15/Add.236, para. 59)

In order for measures to be effective, States are advised to undertake initial studies, train professionals and to involve the children themselves in their recovery:

“The Committee recommends that the State Party:



- (a) Undertake a comprehensive study on children affected by armed conflict in order to assess the extent, scope and population affected and identify its consequences and needed recovery and remedy;
- (b) Strengthen awareness-raising campaigns with the involvement of children;
- (c) Evaluate the work of existing structures and provide training to the professionals involved in the programmes.
- (d) Extend the psychological and social assistance for children who have been affected by armed conflict,
- (e) Take effective measures to ensure that the affected children receive adequate compensation." (Croatia CRC/C/15/Add.243, para. 65)

The Committee also pointed out to Sri Lanka that children affected by the conflict needed sensitive reintegration into the education system:

"Almost 20 years of civil conflict has had an extremely negative impact on the implementation of the Convention in the State Party. While recognizing that children will greatly benefit from the peace process, the Committee is concerned that during the transition to peace and the reconstruction process, children who have been affected by the conflict remain a particularly vulnerable group.

"The Committee recommends that the State Party ... take effective measures to ensure that children affected by conflict can be reintegrated into the education system, including through the provision of non-formal education programmes and by prioritizing the rehabilitation of school buildings and facilities and the provision of water, sanitation and electricity in conflict-affected areas..." (Sri Lanka CRC/C/15/Add.207, paras. 44 and 45)

In its General Comment No. 6 on "Treatment of unaccompanied and separated children outside their country of origin", the Committee emphasizes the great need of some children for rehabilitative care:

"In ensuring their access, States must assess and address the particular plight and

vulnerabilities of such children. They should, in particular, take into account the fact that unaccompanied children have undergone separation from family members and have also, to varying degrees, experienced loss, trauma, disruption and violence. Many such children, in particular those who are refugees, have further experienced pervasive violence and the stress associated with a country afflicted by war. This may have created deep-rooted feelings of helplessness and undermined a child's trust in others. Moreover, girls are particularly susceptible to marginalization, poverty and suffering during armed conflict, and many may have experienced gender-based violence in the context of armed conflict. The profound trauma experienced by many affected children calls for special sensitivity and attention in their care and rehabilitation." (Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, para. 47)

In particular, it notes the need for receiving States to make particular efforts to rehabilitate former child soldiers:

"Child soldiers should be considered primarily as victims of armed conflict. Former child soldiers, who often find themselves unaccompanied or separated at the cessation of the conflict or following defection, shall be given all the necessary support services to enable reintegration into normal life, including necessary psychosocial counselling. Such children shall be identified and demobilized on a priority basis during any identification and separation operation. Child soldiers, in particular, those who are unaccompanied or separated, should not normally be interned, but rather, benefit from special protection and assistance measures, in particular as regards their demobilization and rehabilitation. Particular efforts must be made to provide support and facilitate the reintegration of girls who have been associated with the military, either as combatants or in any other capacity."

(Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, para. 56)



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

Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 39, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 39 is relevant to **departments of social welfare, health, employment, justice, defence, foreign affairs**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 39 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 39 likely to include the training of **all those responsible for child protection, teachers, social workers and health workers**)?

• Specific issues in implementing article 39

Does the State ensure that appropriate rehabilitative measures, consistent with article 39, are taken to promote physical and psychological recovery and social reintegration of all children within its jurisdiction who are victims of

- any form of neglect?
- violence or abuse?
- sexual abuse?
- sexual exploitation?
- drug abuse?
- economic exploitation?
- Does the State ensure appropriate recovery and social reintegration for children involved in the juvenile justice system?
- Has the State taken appropriate measures to ensure that compensation is available for child victims?



How to use the checklist, see page XIX

- Has the State reviewed the environment in which such recovery and reintegration takes place in each case to ensure that it fosters the health, self-respect and dignity of the child?
- Has the State ensured that there is respect for the views of the child victims in planning and implementing programmes for recovery and reintegration, including in individual cases?

Has the State ratified:

- the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography?
- the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime?

Reminder: The Convention is indivisible and its articles interdependent. Article 39 should not be considered in isolation.

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground

Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children

Article 6: right to life and maximum possible survival and development

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

Closely related articles

Articles whose implementation is particularly related to that of article 39 include:

Article 19: protection from all forms of violence

Article 22: refugee children

Article 32: child labour

Article 33: drug abuse

Article 34: sexual exploitation

Article 35: sale, trafficking and abduction

Article 36: other forms of exploitation

Article 37: torture or any other cruel, inhuman or degrading treatment or punishment

Article 38: armed conflict

Article 40: juvenile justice

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Administration of juvenile justice

article

40

Text of Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) *If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;*

(vi) *To have the free assistance of an interpreter if the child cannot understand or speak the language used;*

(vii) *To have his or her privacy fully respected at all stages of the proceedings.*

3. *States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:*

(a) *the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;*

(b) *whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.*

4. *A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well being and proportionate both to their circumstances and the offence.*



Summary

Article 40 covers the rights of all children alleged as, accused of or recognized as having infringed the penal law. Thus it covers treatment from the moment an allegation is made, through investigation, arrest, charge, any pre-trial period, trial and sentence. The article requires States to promote a distinctive system of juvenile justice for children (i.e., in the light of article 1, up to 18) with the specific positive, rather than punitive, aims set out in paragraph 1.

Article 40 details a list of minimum guarantees for the child and it requires States Parties to set a minimum age of criminal responsibility, to provide measures for dealing with children who may have infringed the penal law without resorting to judicial proceedings and to provide

a variety of alternative dispositions to institutional care. In addition to the protection of article 40, article 37 (page 547) bars the death penalty and life imprisonment without possibility of release and insists that any restriction of liberty must be used as a last resort and for the shortest appropriate period of time. Article 39 requires measures to promote physical and psychological recovery and reintegration of child victims (page 589). The Committee on the Rights of the Child has commended the United Nations rules and guidelines on juvenile justice as providing relevant standards for the implementation of the Convention on the Rights of the Child. In 2007 it adopted General Comment No. 10 on “Children’s rights in Juvenile Justice”.

United Nations rules and guidelines on juvenile justice

The Committee, in its examination of States Parties' reports and in its General Comment No. 10 on "Children's rights in Juvenile Justice", has stated consistently that it regards the United Nations rules and guidelines relating to juvenile justice as providing relevant detailed standards for the implementation of article 40 and the administration of juvenile justice (the United Nations Standard Minimum Rules for the Administration of Juvenile Justice – the "Beijing Rules"; the United Nations Rules for the Protection of Juveniles Deprived of their Liberty; and the United Nations Guidelines for the Prevention of Juvenile Delinquency – the Riyadh Guidelines). For full text, see Appendix 4, pages 732 *et seq.*

The Committee has also referred to the Guidelines for Action on Children in the Criminal Justice System, prepared at an expert group meeting in Vienna (Austria), in February 1997 (Economic and Social Council resolution 1997/30, Annex) and to the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, Annex). The latter may be relevant to the treatment of child victims of or witnesses of crime within justice systems. The Guidelines suggests that they could also be applied "to processes in informal and customary systems of justice such as restorative justice and in non-criminal fields of law including, but not limited to, custody, divorce, adoption, child protection, mental health, citizenship, immigration and refugee law" (para. 6)

It should be noted that the "Beijing Rules" defines "juvenile" as a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult. The provisions on juvenile justice in the Convention on the Rights of the Child apply to "children", defined for the purposes of the Convention as everyone below the age of 18, unless under national law majority is attained earlier. The Committee has indicated that States Parties should not reduce the protection available to under-18-year-olds simply because majority is reached earlier (see also Human Rights Committee, General Comment No. 17, 1989, HRI/GEN/1/Rev.8, pp. 183 *et seq.*). Thus the Committee on the Rights of the Child believes that the standards in the rules and guidelines should be applied to all aged under 18. This is highlighted in the Committee's General

Comment No. 10 on "Children's rights in Juvenile Justice" (CRC/C/GC/10).

The "Beijing Rules" proposes that they should be applied beyond the criminal justice system for juveniles. Its rule 3 states:

"(1) The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.

(2) Efforts should be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.

(3) Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders."

The official commentary on the "Beijing Rules" indicates that rule 3(1) applies to "the so-called 'status offences' prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for adults (for example, truancy, school and family disobedience, buying tobacco or alcohol, etc.)" (see below, page 611).

Establishing a child-oriented juvenile justice system

In its General Comment No. 10 on "Children's rights in Juvenile Justice", the Committee states that the Convention requires States to develop and implement a comprehensive juvenile justice policy:

"This comprehensive approach should not be limited to the implementation of the specific provisions contained in articles 37 and 40, but should also take into account the general principles enshrined in articles 2, 3, 6, and 12 and all other relevant articles of the CRC, such as articles 4 and 39." (Committee on the Rights of the Child, General Comment No. 10, 2007, CRC/C/GC/10, para. 3)

The General Comment details the implications of the principles and of other relevant articles (see summary, page 604 and for full text see www.ohchr.org/english/bodies/crc/comments.htm).

The United Nations Secretary-General's Study on Violence Against Children, which reported to the General Assembly in October 2006, recommends: "States should establish comprehensive, child-centred, restorative juvenile justice systems that reflect international standards." (Report of the independent expert for the United Nations study on violence against children, United Nations, General Assembly, sixty-first session, August 2006, A/61/299, para. 112(b)).



Children's rights in Juvenile Justice

Committee on the Rights of the Child, General Comment No. 10, 2007: summary

The Committee acknowledges States' efforts to establish juvenile justice systems in compliance with the Convention on the Rights of the Child (CRC), but suggests many States have a long way to go to achieve full compliance. This may be the result of a lack of the necessary comprehensive policy, requiring establishment of specialized, trained units within the police, the judiciary, court system and prosecutor's office, and specialized representatives to provide legal and other assistance to the child.

The aim of the General Comment is to provide States with elaborated guidance and recommendations, promoting diversion and restorative justice and enabling States Parties to respond to children in conflict with the law in a manner which serves the best interests not only of the children but of the whole society; also to promote the integration into national policies of other international standards, in particular the relevant United Nations rules and guidelines.

Leading principles: The leading principles for a comprehensive policy for juvenile justice are found in the articles identified by the Committee as general principles (articles 2, 3, 6 and 12) together with articles 37 and 40.

States Parties must take all necessary measures to ensure that all children in conflict with the law are treated equally, without discrimination (article 2). Particular care must be taken over treatment of vulnerable groups of children, including street children, children belonging to racial, ethnic, religious or linguistic minorities, children who are indigenous, girls, children with disabilities and recidivist children repeatedly in conflict with the law. Rules, regulations and protocols should enhance equal treatment and provide for redress, remedies and compensation.

Further discriminatory victimization can affect former child offenders, trying to get education or work. There should be appropriate support with reintegration and public campaigns emphasizing their right to assume a constructive role in society.

Children should not be criminalized for behavioural problems, such as vagrancy, truancy, running away and other acts, which are often the result of psychological or socio-economic problems. These amount to status offences, not considered offences if committed by adults, and should be abolished. Such behaviour should be dealt with through child protective measures, including support for parents/caregivers and measures addressing root causes.

The best interests of the child must be a primary consideration throughout the process (article 3(1)). For under-18-year-olds, concepts of retribution and repression must give way to rehabilitation and restorative justice objectives; this can be done with attention to effective public safety.

The right to life, survival and maximum development (article 6) should inspire prevention and result in policies which support child development. The death penalty and life sentences without parole are explicitly prohibited in article 37(a) and the Committee strongly recommends the abolition of all forms of life imprisonment for offences committed under the age of 18. Deprivation of liberty, including arrest, detention and imprisonment – which has very negative consequences for a child's harmonious development and seriously hampers reintegration – must be used only as a measure of last resort and for the shortest appropriate time; this applies equally to deprivation of liberty in all systems and settings.

The right of children to express their views and have them given due weight, including the right to be heard in all judicial and administrative proceedings affecting them, must be respected and implemented throughout every stage of the process (article 12).

The inherent right to dignity (reflected in the Preamble and article 40(1)) has to be respected and protected throughout the entire process. Treatment must reinforce the child's respect for the human rights and freedoms of others and take account of the child's age and promote the child's reintegration, assuming a constructive role in society. All forms of violence against children in conflict with the law must be prohibited and prevented.



Prevention: The Committee supports the Riyadh Guidelines; prevention policies should facilitate the successful socialization and integration of all children, in particular in the family, the community, peer groups, schools, vocational training and work. The Committee underlines States' obligation to support parents and families and develop community-based services and programmes.

Interventions without judicial proceedings: States are required under article 40(3) to promote measures which do not involve judicial proceedings, ensuring that human rights and legal safeguards are fully respected (the General Comment lists requirements, including that the child has access to legal advice, is not put under any pressure to acknowledge responsibility for the offence and freely consents to the diversion). The Committee argues that diversion should be applied to, but not be limited to, all minor and first time offenders. Diversion avoids stigmatization and has good outcomes for children and public safety, as well as being cost-effective. Forms of diversion include community-based programmes such as community service, supervision and guidance by social workers or probation officers, family conferences and other forms of restorative justice including restitution to/compensation of victims.

Interventions involving judicial proceedings: Where the matter goes to court, the principles of a fair trial must be applied (see below). There should be a range of social and educational measures available and in particular the use of restriction of liberty must be used only as a last resort and for the shortest appropriate time. Public prosecutors or other responsible officials should continuously explore the possibility of alternatives to a court conviction (but always ensuring that human rights are respected and with legal safeguards, as noted above). The law must provide the court/judge with a wide variety of alternatives to institutional care and deprivation of liberty. The need to safeguard the well-being and best interests of the child and promote his or her re-integration must outweigh other considerations.

Age limits: The Committee interprets article 40(3) as requiring States Parties to set a minimum age of criminal responsibility (MACR) below which children cannot be held responsible in a penal law procedure. The Committee considers that a minimum age below 12 is not internationally acceptable. States are urged to increase their MACR to a higher age than 12 and not to lower the age. There should be no exceptions to the MACR (for example in cases of serious offences). The applicability of the juvenile justice system must extend to 18. The Committee highlights, as in other General Comments, the importance of universal birth registration.

Right to a fair trial: Article 40(2) lists guarantees aiming to ensure a fair trial. The Committee emphasizes that these are minimum standards and the General Comment provides detailed guidance on each point. With reference to article 40(2)(b)(vii), the Committee emphasizes the obligation to protect the child's privacy throughout the whole juvenile justice process, ensuring no information is published that could lead to the identification of the child. Children's records must be kept strictly confidential and must not be used in subsequent adult proceedings.

Deprivation of liberty: The Committee reiterates the obligation only to use deprivation of liberty in conformity with the law, as a measure of last resort and for the shortest appropriate period of time. It emphasizes the need to reduce use of pre-trial detention and recommends that any such detention should be reviewed, preferably every two weeks. Children in pre-trial detention should be brought to trial in not more than 30 days. The Committee comments on the obligation to separate children deprived of liberty from adults, unless it is considered in the child's best interests not to do so; best interests should be interpreted narrowly in this context. The General Comment reviews in detail the required standards to apply to all children who are deprived of their liberty, drawing on the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

Awareness-raising: States should conduct or support, with the involvement of children, educational and other campaigns to highlight the obligation to develop a rights-based approach to children in conflict with the law, seeking active and positive involvement of parliamentarians, NGOs and the media. The Committee is concerned at discriminatory and negative stereotyping of children in conflict with the law and misrepresentation or misunderstanding of the causes of juvenile delinquency.



Data collection and research: States are urged to collect systematically disaggregated data on all aspects of the administration of juvenile justice and also to regularly evaluate their practice and its effects, invariably involving children, with due respect for their privacy and other safeguards.

(Committee on the Rights of the Child, General Comment No. 10, “Children’s rights in Juvenile Justice”, 2007, CRC/C/GC/10. This is an unofficial summary of the General Comment. For full text see www.ohchr.org/english/bodies/crc/comments.htm.)



The *World Report on Violence against Children*, complementing the Study report, emphasizes: “Governments should ensure that juvenile justice systems for all children up to age 18 are comprehensive, child-focused and have rehabilitation and social reintegration as their paramount aims. Such systems should adhere to international standards, ensuring children’s right to due process, legal counsel, access to family and the resolution of cases as quickly as possible.” (Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006, p. 219)

The “Beijing Rules” notes in “Fundamental perspectives” that “Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.” (Rule 1(4))

In the case of many States Parties, the Committee has expressed concern that the system of justice for juveniles is not compatible with the principles and provisions of the Convention, in particular articles 37, 39 and 40, and of other international instruments, citing in particular the United Nations rules and guidelines. It has paid special attention to the need to develop a distinct system for juvenile justice; to the age of criminal responsibility, which in many cases it believes is set too low (see page 617); and to the importance of training focused on children’s rights (see page 610).

The Committee continues to advocate comprehensive reform of the juvenile justice system to most States whose reports it examines, and encourages them to seek technical assistance. For example:

“The Committee recommends that the State Party:

(a) Take all appropriate measures to implement a juvenile justice system that is in conformity with the Convention, in particular articles 37, 40 and 39, and other United Nations standards in this field, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the ‘Beijing

Rules’), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty;

(b) Use deprivation of liberty only as a measure of last resort and for the shortest possible period of time; protect the rights of children deprived of their liberty, including their right to privacy; and ensure that children deprived of their liberty remain in contact with their families;

(c) Take all appropriate measures to improve the situation of children in juvenile detention facilities, including their access to adequate food, clothing, heating, educational opportunities and leisure activities;

(d) Introduce training programmes on relevant international standards for all professionals involved with the administration of juvenile justice;

(e) Consider seeking technical assistance from, among others, OHCHR, the Centre for International Crime Prevention, the International Network on Juvenile Justice and UNICEF, through the Coordination Panel on Technical Advice and Assistance in Juvenile Justice.” (Georgia CRC/C/15/Add.124, para. 69)

It pursued these issues when it examined Georgia’s Second Report:

“The Committee reiterates its previous recommendations that the State Party:

(a) Ensure the full implementation of juvenile justice standards and in particular articles 37, 40 and 39 of the Convention, as well the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the ‘Beijing Rules’) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), in the light of the Day of General Discussion on the administration of juvenile justice, held by the Committee in 1995;

(b) Use detention, including pre-trial detention, only as a measure of last resort, for as short a time as possible, and develop alternative measures, such as community service and half-way homes to deal with juvenile delinquents in a more effective and appropriate manner;

(c) In light of article 39, take appropriate measures to promote the recovery and social reintegration of the children involved in the

juvenile justice system, including adequate education and certification to facilitate their reintegration;

(d) Strengthen preventive measures, such as supporting the role of families and communities in order to prevent juvenile delinquency;

(e) Request technical assistance in the area of juvenile justice from, among others, the Office of the United Nations High Commissioner for Human Rights and UNICEF." (Georgia CRC/C/15/Add.222, para. 69)

Similarly, following examination of Benin's Second Report and Ethiopia's Third Report, the Committee recommended:

"... that the State Party continue to strengthen its efforts to bring the administration of juvenile justice fully into line with the Convention, in particular articles 37, 40 and 39, and with other United Nations standards in the field of juvenile justice... In this regard, the Committee recommends in particular that the State Party:

(a) Strictly enforce existing legislation and legal procedures with more intense and systematic training for judges, counsels for persons under 18, penitentiary staff and social workers on children's rights and special needs;

(b) Urgently establish an age for criminal responsibility at an internationally acceptable level;

(c) Ensure that children deprived of their liberty remain in regular contact with their families while in the juvenile justice system, when appropriate;

(d) Implement alternative measures to deprivation of liberty, such as probation, community service or suspended sentences, in order to ensure that persons below 18 are deprived of liberty only as a last resort and for the shortest appropriate period of time;

(e) Consider establishing family courts with specialized juvenile judges; and

(f) Facilitate the reintegration of children in their families and communities and follow-up by social services." (Benin CRC/C/BEN/CO/2, para. 76)

"The Committee recognizes the efforts undertaken, for example through the Juvenile Justice Project Office, however notes that its impact has been hampered by limited resources. Furthermore the Committee regrets the absence of a child-friendly juvenile justice system in most of the country and the lack of legal aid representatives for child victims of offences as well as accused children. The Committee is concerned that deprivation of liberty is not used as a measure of last resort and at the lack of separation of children from adults in pre-trial detention, as well as the practice of long-term detention and institutionalization. Furthermore the

Committee is concerned at the very low minimum age of criminal responsibility (set at age 9).

"The Committee urges the State Party to ensure that juvenile justice standards are fully implemented, in particular articles 37(b), 40 and 39 of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules') and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules), and in the light of the Committee's Day of General Discussion on the administration of juvenile justice held on 13 November 1995 (CRC/C/46, paras. 203-238).

In particular, the Committee recommends that the State Party:

"... (a) Raise the minimum age for criminal responsibility to an internationally acceptable level;

(b) Continue to increase the availability and quality of specialized juvenile courts and judges, police officers and prosecutors through systematic training of professionals;

(c) Provide adequate financial, human and technical resources to the juvenile courts at sub-county level;

(d) Strengthen the role of local authorities, especially with regard to minor offences;

(e) Provide children, both victims and accused, with adequate legal assistance at an early stage of legal proceedings;

(f) Be guided in this respect by the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (resolution 2005/20 of the Economic and Social Council);

(g) Improve training programmes on relevant international standards for all professionals involved with the system of juvenile justice;

(h) Ensure that detention and institutionalization of child offenders is only resorted to as a last resort;

(i) Seek technical assistance and other cooperation from the United Nations Interagency Panel on Juvenile Justice." (Ethiopia CRC/C/ETH/CO/3, paras. 77 and 78)

Non-discrimination

The Committee's General Comment No. 10 on "Children's rights in Juvenile Justice" emphasizes that States Parties must "take all appropriate measures to ensure that all children in conflict with the law are treated equally". It goes on to emphasize the need for special attention to vulnerable groups. Rules, regulations and protocols should be established to enhance equal treatment of child offenders and provide redress, remedies and compensation (CRC/C/GC/10, para. 4).





The “Beijing Rules” includes a non-discrimination principle: “The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.” (Rule 2(1))

Special measures may be needed to prevent discrimination against children with disabilities in conflict with the law. The Committee’s General Comment No. 9 on “The rights of children with disabilities” states:

“In the light of article 2 States Parties have the obligation to ensure that children with disabilities who are in conflict with the law (as described in article 40, paragraph 1) will be protected by all the provisions and guarantees contained in the Convention, not only by those specifically relating to juvenile justice (articles 40, 37 and 39) but by all other relevant provisions, for example in the area of health care and education. In addition, States Parties should take where necessary specific measures to ensure that children with disabilities de facto are protected by and do benefit from the rights mentioned above.

“With reference to the rights enshrined in article 23 and given the high level of vulnerability of children with disabilities, the Committee recommends – in addition to the general recommendation made in the previous paragraph – that the following elements of the treatment of children with disabilities (allegedly) in conflict with the law are taken into account:

(a) Ensure that a child with disability who comes in conflict with the law is interviewed using appropriate languages and otherwise dealt with by professionals such as police officers, attorneys/advocates/social workers, prosecutors and/or judges, who have received proper training in this regard.

(b) Develop and implement alternative measures with a variety and flexibility that allow for an adjustment of the measure to the individual capacities and abilities of the child in order to avoid the use of judicial proceedings. Children with disabilities in conflict with the law should be dealt with as much as possible without resorting to formal/legal procedures. Such procedures should only be considered when necessary in the interest of public order. In those cases special efforts have to be made to inform the child about the juvenile justice procedure and his or her rights therein.

(c) Children with disabilities in conflict with the law should not be placed in a regular juvenile detention centre by way of pre-trial detention nor by way of a punishment. Deprivation of liberty should only be applied if necessary with a view to providing the child with adequate treatment for addressing his or her problems

which have resulted in the commission of a crime and the child should be placed in an institution that has the specially trained staff and other facilities to provide this specific treatment. In making such decisions the competent authority should make sure that the human rights and legal safeguards are fully respected.” (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, paras. 73 and 74)

The Convention on the Rights of Persons with Disabilities, adopted in December 2006, requires:

“1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

“2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.” (Article 13)

In its General Comment No. 10 on “Children’s rights in Juvenile Justice”, the Committee identifies as vulnerable groups, potentially subject to discrimination, street children, children belonging to racial, ethnic, religious or linguistic minorities, children who are indigenous, girl children, children with disabilities and children who are repeatedly in conflict with the law – recidivists (CRC/C/GC/10, para. 4). In examining States’ reports, the Committee has noted, for example, discrimination or potential discrimination in juvenile justice against economically and socially disadvantaged children, against Roma children and against indigenous children, recommending:

“... that the State Party undertake to ensure that adequate protection is afforded to economically and socially disadvantaged children in conflict with the law and that alternatives to institutional care are available, as provided for under article 40, paragraphs 3 and 4, of the Convention.” (Bolivia CRC/C/15/Add.1, para. 16)

“... Urgently remedy the over-representation of indigenous children in the criminal justice system; Deal with children with mental illnesses and/or intellectual deficiencies who are in conflict with the law without resorting to judicial proceedings;...” (Australia CRC/C/15/Add.268, para. 74 (c) and (d))

“... Ensure that the principle of non-discrimination is strictly applied, in particular with regards to children of vulnerable groups such as Roma;...” (Hungary CRC/C/HUN/CO/2, para. 61(d))

In recommendations adopted following its Day of General Discussion on “The rights of indigenous children”, the Committee goes beyond non-discrimination in suggesting respect for traditional responses to offending – provided they are in the best interests of the child:

“To the extent compatible with articles 37, 39 and 40 of the Convention and other United Nations standards and rules, the Committee suggests that States Parties respect the methods customarily practised by indigenous peoples for dealing with criminal offences committed by children, when it is in the best interests of the child ...” (Committee on the Rights of the Child, Report on the thirty-fourth session, September/October 2003, CRC/C/133, p. 134)

Best interests

In all decisions taken within the context of the administration of juvenile justice, the best interests of the child are to be a primary consideration; in its General Comment No. 10 on “Children’s rights in Juvenile Justice”, the Committee emphasizes that rehabilitation and restorative justice are the objectives, not retribution or repression (CRC/C/GC/10, para. 4). Consistent with the best interests principle in article 3 of the Convention on the Rights of the Child, the “Beijing Rules” requires that Member States seek “to further the well-being of the juvenile and her or his family” (rule 1(1)); and that: “The juvenile justice system shall emphasize the well-being of the juvenile...” (Rule 5(1)) Also proceedings “shall be conducive to the best interests of the juvenile...” (Rule 14(2)) and “The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.” (Rule 17(1)(d))

A Committee member explained in discussions with Mongolia that in revising the penal code, “the rehabilitation of offenders should be the primary objective, not the third, following the protection of society and the punishment of the child in the interest of society, as appeared to be the case” (Mongolia CRC/C/SR.266, para. 38).

Participation

Article 12 of the Convention on the Rights of the Child requires that a child capable of expressing views must have the right to express those views freely in all matters affecting the child and that the child’s views must be given due weight (paragraph 1); in particular, the child must have an opportunity to be heard in any judicial and administrative proceedings affecting him or her (paragraph 2; see

page 149). The Committee confirms in its General Comment No. 10 on “Children’s rights in Juvenile Justice” that these rights must be fully respected and implemented throughout every stage of the process of juvenile justice (CRC/C/GC/10, para. 4). In order to exercise these participatory rights, the child must have access to appropriate information. Thus, children should be involved in the planning and implementation of the justice system affecting children and have a right to be heard and have their views taken seriously in all aspects of the system and all procedures. Article 40 requires that the child is informed promptly and directly of the charges against him or her, has access to legal and other appropriate assistance and is entitled to play a full part in the proceedings (with the assistance of an interpreter, if needed). Equally important in relation to formal proceedings, the child has the right to remain silent (see below, pages 614 and 615). The “Beijing Rules” requires that proceedings shall be conducted “... in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely” (rule 14(2)).

The Riyadh Guidelines in particular emphasizes the importance of participation in prevention as well as planning and implementation: “For the purposes of the interpretation of these guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control” (para. 3). For example, as part of the “comprehensive prevention plans” proposed for every level of government, there should be “Youth participation in delinquency prevention policies and processes, including recourse to community resources, youth self-help, and victim compensation and assistance programmes” (para. 9(h)). In the community, “youth organizations should be created or strengthened at the local level and given full participatory status in the management of community affairs. These organizations should encourage youth to organize collective and voluntary projects, particularly projects aimed at helping young persons in need of assistance” (para. 37). In preparing plans and policies for young people “... young persons themselves should be involved in their formulation, development and implementation” (para. 50).

Effect of public opinion on juvenile justice

In its General Comment No. 10 on “Children’s rights in Juvenile Justice”, the Committee comments:

“Children who commit offences are often subject to negative publicity in the media,





which contributes to a discriminatory and negative stereotyping of these children and often of children in general. This negative presentation or criminalization of child offenders is often based on misrepresentation and/or misunderstanding of the causes of juvenile delinquency and results regularly in a call for a tougher approach (e.g. zero tolerance, three strikes and you are out, mandatory sentences, trial in adult court and other primarily punitive responses). To create a positive environment for a better understanding of the root causes of juvenile delinquency and a rights-based approach to this social problem, States Parties should conduct, promote and/or support educational and other campaigns to raise awareness of the need and the obligation to deal with children alleged as violating the penal law in accordance with the spirit and the letter of the CRC. In this regard, States Parties should seek the active and positive involvement of members of parliament, NGOs and the media...” (Committee on the Rights of the Child, General Comment No. 10, 2007, CRC/C/GC/10, para. 32)

The Committee has often pointed out the social roots of juvenile crime and violence in its comments and discussions with States Parties. For example, a Committee member noted during discussion of Jamaica’s juvenile justice system that “... young offenders should be seen as both perpetrators and victims; the criminality of children was a measure of violence in the broader society...” (Jamaica CRC/C/SR.197, para. 89)

The “Beijing Rules” requires that in all cases involving criminal offences, except minor offences, “before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority” (rule 16).

Training for juvenile justice

The Committee has consistently recommended, and confirms in its 2007 General Comment on “Children’s rights in Juvenile Justice” that all those involved with children in the juvenile justice system, both in its planning and administration and in its institutions and programmes, should receive adequate training with a particular focus on the principles and provisions of the Convention and the relevant United Nations rules and guidelines.

The *World Report on Violence against Children* recommends: “Governments should ensure that staff recruitment, training and employment

policies and rights-based codes of conduct ensure that all those who work with children in care and justice systems are both qualified and fit to work with children and young people, that their professional status is recognized, and that their wages are adequate... Governments should ensure that all those who come into contact with children during the process of their assimilation into care and justice systems should be familiarized with children’s rights; this applies equally to the children concerned and to their parents.” (Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006, pp. 216 and 217)

Prevention of offending

The Convention on the Rights of the Child does not specifically address prevention of offending, but as indicated above, the Committee on the Rights of the Child has emphasized the social roots of offending, and it has also consistently proposed that the Riyadh Guidelines for the Prevention of Juvenile Delinquency should be regarded as providing relevant standards for implementation. The Guidelines requires “comprehensive prevention plans” to be instituted at every level of government and proposes that they should be implemented within the framework of the Convention and other international instruments. In its General Comment No. 10 on “Children’s rights in Juvenile Justice”, the Committee states:

“... a juvenile justice policy without a set of measures aimed at preventing juvenile delinquency suffers from serious shortcomings.... The Committee fully supports The Riyadh Guidelines and agrees that emphasis should be placed on prevention policies facilitating the successful socialization and integration of all children, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. This means inter alia that prevention programmes should focus on support for particularly vulnerable families, involvement of schools in teaching basic values (including information about the rights and responsibilities of children and parents under the law), and extending special care and attention to young persons at risk. In this regard, particular attention should also be given to children who drop out from school or otherwise do not complete their education. The use of peer group support and a strong involvement of parents are recommended. States Parties should also develop community-based services and programmes, which respond to the special needs, problems, concerns and interests of children, in particular of children repeatedly in conflict with the law,

and which provide appropriate counselling and guidance to their families.

“Articles 18 and 27 confirm the importance of the responsibility of parents for the upbringing of their children, but at the same time the CRC requires States Parties to provide the necessary assistance to parents (or other caretakers) in the performance of their parental responsibilities.

“The measures of assistance should not only focus on the prevention of negative situations, but also and rather more on the promotion of the social potential of parents... States Parties should fully promote and support the involvement of children, in accordance with article 12 and of parents, community leaders and other key actors (e.g. representatives of NGOs, probation services and social work), in the development and implementation of prevention programmes. The quality of this involvement is a key factor in the success of these programmes.” (Committee on the Rights of the Child, General Comment No. 10, 2007, CRC/C/GC/10, paras. 5 et seq.)

“... the right of every child ... to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society”: **article 40(1)**

Paragraph 1 of article 40 of the Convention upholds the positive, rehabilitative aims of the juvenile justice system, which have been underlined by the Committee in the wider context of the best interests of the child (see above, page 609). The paragraph links to the following provisions in paragraphs 3 and 4 of article 40, which stress the importance of excluding younger children from criminal responsibility, avoiding judicial proceedings and developing a variety of dispositions including in particular alternatives to institutional care (see below, page 619). It also echoes the aims of education set out in article 29 (see page 437), which include development of respect for human rights, and preparation of the child for responsible life in a free society.

In relation to criminal justice systems, the International Covenant on Civil and Political Rights requires: “In the case of juvenile persons,

the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.” (Article 14(4))

“To this end, and having regard to relevant provisions of international instruments, States Parties shall, in particular, ensure that: (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed”: **article 40(2)(a)**

These words reflect the principle that offences must have been defined in the criminal law at the time they were committed. See, for example, the Universal Declaration of Human Rights, article 11(2), and the International Covenant on Civil and Political Rights, article 15. In addition, the Covenant states “... Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.”

“Status” offences. In its General Comment No. 10 on “Children’s rights in Juvenile Justice”, the Committee states that criminal codes quite often include provisions criminalizing behavioural problems of children, such as vagrancy, truancy, running away and other acts, which are often the result of psychological or socio-economic problems. Such acts (also known as status offences) are not considered to be an offence if committed by adults. The Committee recommends that States should abolish status offences in order to establish equal treatment under the law for children and adults; such behaviour should be dealt with through the implementation of child protective measures, including effective support for parents and/or other caregivers and measures which address root causes (CRC/C/GC/10, para. 4).

The Committee refers to article 56 of the Riyadh Guidelines: “In order to prevent further stigmatisation, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.”





In examining States' reports, the Committee frequently expresses concern at criminalization of children for "status" offences or behaviour problems. For example, commenting on Egypt's Second Report, the Committee noted its concern

*"... that status offences, such as begging and truancy, under article 96 of the Children's Code are in practice criminalized...
"The Committee recommends that the State Party repeal status offences such as begging and truancy..."* (Egypt CRC/C/15/Add.145, paras. 53 and 54)

Similarly, it expressed concern that in Nigeria

"... some children are detained for 'status offences' such as vagrancy, truancy or wandering, or at the request of parents for 'stubbornness or for being beyond parental control'..." (Nigeria CRC/C/15/Add.257, para. 78(h))

and in Bahrain:

"... under article 2 of the 1976 Juvenile Law, persons who commit status offences (e.g. begging, dropping out, misbehaviour, etc.) are subject to legal sanctions;..."

it recommended that the State should

"... end the criminalization of status offences (e.g. dropping out of school, and misbehaviour);..." (Bahrain CRC/C/15/Add.175, para. 48)

It has emphasized with increasing frequency that behavioural problems should not be criminalized, for example, following examination of reports from Kazakhstan, Japan, Ireland and Denmark:

"The Committee is concerned at the general lack of comprehensive information on the Criminal Code and the Criminal Procedure Code. The Committee notes, inter alia, that disorderly conduct has been defined as a serious crime constituting a danger to society, leading to the criminalization of behavioural problems.

"The Committee recommends that the State Party review its classification of serious crimes in order to reduce criminal law prosecution of 14- to 16-year-old children and abolish provisions that criminalize the behavioural problems of children (so-called status offences)." (Kazakhstan CRC/C/15/Add.213, paras. 68 and 69)

"... the Committee is concerned at reports that children exhibiting problematic behaviour, such as frequenting places of dubious reputation, tend to be treated as juvenile offenders.

"The Committee recommends that the State Party:... Ensure that children with problematic behaviour are not treated as criminals;..." (Japan CRC/C/15/Add.231, paras. 53 and 54(f))

"The Committee is also concerned that the Anti-Social Behaviour Orders provided for in

the Criminal Justice Act 2006 will have the effect of bringing 'at risk' children closer to the criminal justice system, especially as a breach of an Order is considered a crime. Furthermore, the Committee is concerned that the wide discretion of the judges as to the type and content of an Order may lead to measures that are disproportionate to the impugned behaviour.

"The Anti-Social Behaviour Orders be closely monitored and only used as a last resort after preventive measures (including a diversion scheme and family conferences) have been exhausted." (Ireland CRC/C/IRL/CO/2, paras. 68 and 69(b))

"... Take measures to abolish the practice of imprisoning or confining in institutions persons under 18 who display difficult behaviour;..." (Denmark CRC/C/DNK/CO/3, para. 59(b))

Although the Committee recommends that States take action to protect children from being drawn into gangs, it has expressed particular concern at repressive measures taken in response to juvenile gangs, for example following examination of El Salvador's Second Report:

"The Committee is deeply concerned that measures taken under the so-called 'Tough Hand Plan' (Plan Mano Dura), adopted in July 2003, and the Anti-Gang Laws, in force since October 2003, including the second Anti-Gang Law (Ley para el combate de las actividades delincuenciales de grupos o asociaciones ilícitas especiales) of 1 April 2004, are in breach of the Convention. The Committee expresses concern at, inter alia, the notion of a 'capable minor' (menor habilitado), which provides for the possibility of prosecuting a child as young as aged 12 as an adult; and the fact that the law criminalizes physical features, such as the use of signs or symbols as a means of identification and the wearing of tattoos or scars. Moreover, the Committee is concerned that the Anti-Gang Laws undermine the Juvenile Offenders Act by introducing a dual system of juvenile justice. The Committee also expresses concern at the large number of children who have been detained as a consequence of the 'Tough Hand Plan' and the Anti-Gang Laws, and regrets the lack of social and educational policies to address the problems of gang involvement and violence and crime among adolescents.

"The Committee urges the State Party to immediately abrogate the second Anti-Gang Law and to apply the Juvenile Offenders Act as the only legal instrument in the area of juvenile justice. The Committee reaffirms the State Party's obligation to ensure that measures taken to prevent and combat crime are fully in conformity with international human rights standards and based on the principle of the best interests

of the child. It recommends that the State Party adopt comprehensive strategies which are not limited to penal measures but also address the root causes of violence and crime among adolescents, in gangs and outside gangs, including policies for social inclusion of marginalized adolescents; measures to improve access to education, employment and recreational and sports facilities; and reintegration programmes for juvenile offenders.” (El Salvador CRC/C/15/Add.232, paras. 67 and 68)

“(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:...”

Paragraph 2(b) of article 40 sets out a minimum list of guarantees that must be available to children alleged as or accused of criminal acts. Some reflect principles already established for everyone including children under other international instruments, but some are applicable specifically to children. The Committee’s General Comment No. 10 on “Children’s rights in Juvenile Justice” provides States with further guidance on each guarantee.

The “Beijing Rules” states: “Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings” (rule 7(1)). The commentary to the Rules notes: “Rule 7(1) emphasizes some important points that represent essential elements for a fair and just trial and that are internationally recognized in existing human rights instruments... Rules 14 *et seq.* of these Standard Minimum Rules specify issues that are important for proceedings in juvenile cases in particular, while rule 7(1) affirms the most basic procedural safeguards in a general way.” Rule 14 states: “14(1) Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial. 14(2) The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.”

“(i) To be presumed innocent until proven guilty according to law”

This reflects provisions in the Universal Declaration of Human Rights, article 11, and

the International Covenant on Civil and Political Rights, article 14(2).

The Committee on the Rights of the Child has noted with concern legislation that enables silence to be interpreted as supporting a finding of guilt (also relating to the right not to be compelled to give testimony or to confess guilt – article 40(2)(b)(iv)):

“The Committee is also concerned that The Criminal Evidence (N.I.) Order 1988 appears to be incompatible with article 40 of the Convention, in particular with the right to presumption of innocence and the right not to be compelled to give testimony or confess guilt. It is noted that silence in response to police questioning can be used to support a finding of guilt against a child over 10 years of age in Northern Ireland. Silence at trial can be similarly used against children over 14 years of age...”

“The Committee recommends that the emergency and other legislation, including in relation to the system of administration of juvenile justice, at present in operation in Northern Ireland should be reviewed to ensure its consistency with the principles and provisions of the Convention.” (United Kingdom CRC/C/15/Add.34, paras. 20 and 34)

And it commented to Colombia:

“... the Committee is concerned that the general practice of law enforcement agents to publicly display images in media of arrested persons contravenes the principle of presumption of innocence.”

It recommended that Colombia should ensure that the principles relating to the presumption of innocence and the right to a fair trial are guaranteed (Colombia CRC/C/COL/CO/3, paras. 91 and 92).

“(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence”

Article 9(2) of the International Covenant on Civil and Political Rights requires that anyone who is arrested shall be informed, at the time of arrest, of the reasons for it “and shall be promptly informed of any charges against him”. Article 14(3)(a) requires that everyone charged with a criminal offence shall be “informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.” The Convention adds the requirement to inform the child “if appropriate, through his or her parents or legal guardians” – presumably this





requirement is to be decided in the light of the child's best interests.

The "Beijing Rules" expands on the right to legal assistance: "Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country." (Rule 15(1))

In addition, the International Covenant on Civil and Political Rights provides that everyone charged with a criminal offence should have "adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing" (article 14(3)(b)) and "to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it" (article 14(3)(d)).

The Committee has commented on lack of legal assistance. For example, following examination of Nigeria's Second Report, it expressed concern that under-18-year-olds are often not legally represented during trial, and recommended that the State should

"... Guarantee that all persons below 18 have the right to appropriate legal assistance and defence and ensure speedier fair trials for them;..." (Nigeria CRC/C/15/Add.257, para. 81(b))

"(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians"

In its General Comment on "Children's rights in Juvenile Justice", the Committee concludes:

"Internationally there is a consensus that for children in conflict with the law the time between the commission of the offence and the final response to this act should be as short as possible. The longer this period, the more likely it is that the response loses its desired positive, pedagogical impact, and the more the child will be stigmatized.

"In this regard, the Committee also refers to article 37(d) CRC, where the child deprived of liberty has the right to a prompt decision on his/her action to challenge the legality of the

deprivation of his/her liberty. The standard 'prompt' is even stronger - and justifiably so given the seriousness of deprivation of liberty - than the standard 'without delay' (art. 40(2)(b)(iii) CRC), which is stronger than the standard 'without undue delay' of article 14(3)(c) ICCPR [International Covenant on Civil and Political Rights].

"The Committee recommends the States Parties to set and implement time limits for the period between the commission of the offence and the completion of the police investigation, the decision of the prosecutor (or other competent body) to bring charges against the child, and the final adjudication and disposition by the court or other competent judicial body. These time limits should be much shorter than the ones for adults. But at the same time, decisions without delay should be the result of a process in which the human rights of the child and legal safeguards are fully respected..." (Committee on the Rights of the Child, General Comment No. 10, 2007, CRC/C/GC/10, para. 23)

There are similar provisions in the Universal Declaration of Human Rights, article 10, and the International Covenant on Civil and Political Rights, article 14. The Covenant requires trial without "undue" delay; the Convention on the Rights of the Child removes the qualification "undue" in the case of children. Article 40 of the Convention does not refer to pre-trial detention because article 37 requires that restriction of liberty in any circumstances may only be used as a measure of last resort and for the shortest appropriate period (see article 37, page 556 for discussion and for the Committee's, and other, comments).

Article 40 adds to the child's established right to legal and other appropriate assistance, the principle that the child's parents or legal guardians should be present, "unless it is considered not to be in the best interest of the child". The article implies that parents or legal guardians can be required to be present, and can be excluded in certain cases. The "Beijing Rules" emphasizes this: "The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile." (Rule 15(2))

"(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination

of witnesses on his or her behalf under conditions of equality”

In many cultures, there is a social expectation that children should answer when asked questions by adults. It is therefore important to stress that in all stages of criminal proceedings they have a right to remain silent. The Committee’s General Comment No. 10 on “Children’s rights in Juvenile Justice” states that it is self-evident that torture or other cruel, inhuman or degrading treatment to achieve an admission or confession is a grave violation of the child’s rights and no such admission or confession can be admissible in evidence:

“... But there are many other less violent ways to coerce or to lead the child to a confession or a self-incriminatory testimony. The term ‘compelled’ should be interpreted in a broad manner and not be limited to physical force or other clear violations of human rights. The age of the child, the child’s development, the length of the interrogation, the child’s lack of understanding, the fear of unknown consequences or of a suggested possibility of imprisonment, may lead him/her to a confession that is not true. That may become even more likely if rewards are promised such as: ‘You can go home as soon as you have given us the true story’, or lighter sanctions or release are promised.

“The child being questioned must have access to a legal or other appropriate representative, and must be able to request that their parent(s) be present during questioning. There must be independent scrutiny of the methods of interrogation to assure that the evidence is voluntary and not coerced, given the totality of the circumstances, and is reliable. The court or other judicial body, when considering the voluntariness and reliability of an admission or confession by a child, must take into account the age of the child, the length of custody and interrogation, and the presence of legal or other counsel, parent(s), or independent representatives for the child. Police officers and other investigating authorities should be well trained to avoid interrogation techniques and practices that result in coerced or unreliable confessions or testimonies.”

(Committee on the Rights of the Child, General Comment No. 10, 2007, CRC/C/GC/10, para. 23)

See the Universal Declaration of Human Rights, article 11, and the International Covenant on Civil and Political Rights, article 14, which require that in the determination of a criminal charge, everyone shall be entitled “not to be compelled to testify against himself or to confess guilt”. (See also the Committee’s comments quoted under article 40(2)(b)(i), above, page 613.)

“(v) If considered to have infringed the penal law, to have this decision

and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law”

Article 14(5) of the International Covenant on Civil and Political Rights requires: “Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.”

When it ratified the Convention, Denmark made a reservation relating to article 40(2)(b)(v): “It is a fundamental principle in the Danish Administration of Justice Act that everybody shall be entitled to have any penal measures imposed on him or her by a court of first instance reviewed by a higher court. There are, however, some provisions limiting this right in certain cases, for instance verdicts returned by a jury on the question of guilt, which have not been reversed by the legally trained judges of the court.” (CRC/C/2/Rev.8, p. 20) The Committee commented:

“The Committee notes with concern that the State Party made a reservation to article 40(2)(b)(v) of the Convention, but also notes that the Government may reconsider this reservation....

“The Committee wishes to encourage the State Party to consider the possibility of withdrawing its reservation to the Convention, and would like to be kept informed of developments on this matter.” (Denmark CRC/C/15/Add.33, paras. 8 and 16)

In its General Comment No. 10, the Committee notes that this right of appeal should apply to every sentenced child and it recommends States which have made a reservation in relation to article 40(2)(b)(v) to withdraw it (CRC/C/GC/10, para. 23).

“(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used”

The International Covenant on Civil and Political Rights, article 14(3)(f), guarantees the same right. This is important not only to children who speak a different language, but also to children with disabilities (see General Comment No. 9 on “The rights of children with disabilities”, quoted above, page 608).

“(vii) To have his or her privacy fully respected at all stages of the proceedings”

General Comment No. 10 on “Children’s rights in Juvenile Justice” states that “at all stages of the proceedings” includes from the initial





contact with a law enforcement agency right up to and including the final decision by a competent authority, or release from supervision, custody or deprivation of liberty:

“No information shall be published that may lead to the identification of a child offender because of its effect of stigmatization and possible impact on their ability to obtain an education, work, housing, or to be safe... Furthermore, the right to privacy also means that records of child offenders shall be kept strictly confidential and closed to third parties except for those directly involved in the investigation, adjudication and disposal of the case. With a view to avoiding stigmatization and/or prejudgments, records of child offenders shall not be used in adult proceedings in subsequent cases involving the same offender, or to enhance some future sentencing...” (Committee on the Rights of the Child, General Comment No. 10, 2007, CRC/C/GC/10, para. 23)

Article 14(1) of the International Covenant on Civil and Political Rights provides general rules requiring public hearings, indicating limited circumstances in which the press and public may be excluded: “... any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children”.

The “Beijing Rules” expands on the provision in article 40 of the Convention: “The juvenile’s right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling. In principle, no information that may lead to the identification of a juvenile offender shall be published.” (Rule 8(1) and (2))

The official commentary on the Rules explains: “Rule 8 stresses the importance of the protection of the juvenile’s right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as ‘delinquent’ or ‘criminal’.

“Rule 8 also stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle.”

The Committee has expressed concern at breaches of the right to privacy in juvenile justice

and recommended full protection. For example, to the United Kingdom and Canada:

“... The privacy of children involved in the criminal justice system is not always protected and their names are, in cases of serious offences, often published;...”

“Ensure that the privacy of all children in conflict with the law is fully protected in line with article 40(2)(b)(vii) of the Convention;...” (United Kingdom CRC/C/15/Add.188, paras. 60(d) and 62(d))

“The Committee is concerned ... that public access to juvenile records is permitted and that the identity of young offenders can be made public.

“ ... the Committee urges the State Party ... To ensure that the privacy of all children in conflict with the law is fully protected in line with article 40, paragraph 2 (b) (vii) of the Convention;...” (Canada CRC/C/15/Add.215, paras. 56 and 57(c))

“States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law...”: article 40(3)

As noted above (page 603), General Comment No. 10 on “Children’s rights in Juvenile Justice” indicates that States Parties are required to develop a comprehensive juvenile justice policy. This further requires the establishment of specialized units within the police, judiciary, courts system, prosecutors’ office and the provision of specialized defenders or other representatives for children (CRC/C/GC/10, paras. 30 and 31).

The “Beijing Rules” also emphasizes:

“Efforts should be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

- (a) To meet the varying needs of juvenile offenders, while protecting their basic rights;
- (b) To meet the needs of society;
- (c) To implement the following rules thoroughly and fairly.” (Rule 2(3))

The Committee frequently expresses concern at provisions which result in children being dealt with by adult courts. For example, it expressed concern that children were tried as adults in

Canada and the United Kingdom and recommended that the States should :

"... ensure that no person under 18 is tried as an adult, irrespective of the circumstances or the gravity of his/her offence;..." (Canada CRC/C/15/Add.215, para. 57(a). See also United Kingdom CRC/C/15/Add.188, para. 62(c).)

"(a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law"

In its General Comment No. 10 on "Children's rights in Juvenile Justice", the Committee indicates that it interprets this provision of article 40 as a requirement on States to set a minimum age of criminal responsibility – children who commit an offence below the specified age cannot be formally charged or held responsible in a penal law procedure. The Committee emphasizes that a minimum age below 12 is not internationally acceptable. The Committee recommends that States should regard 12 as the absolute minimum and continue to raise the age. No State should lower its minimum age to 12. The Committee recommends that there must be no exceptions once an age is set; it expressed concern about States where a lower age is applicable for children who commit serious offences. If there is no proof of age and it cannot be established that the child is at or above the minimum age, the child shall not be held criminally responsible (CRC/C/GC/10, para. 16).

The "Beijing Rules" requires in rule 4: "In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity."

The commentary to rule 4 states: "The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially anti-social behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.). Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally."

In its General Comment No. 7 on "Implementing child rights in early childhood", the Committee, in a section headed "Young children's vulnerability to risks", emphasizes:

"Under no circumstances should young children (defined as under 8 years old...) be included in legal definitions of minimum age of criminal responsibility. Young children who misbehave or violate laws require sympathetic help and understanding, with the goal of increasing their capacities for personal control, social empathy and conflict resolution. States Parties should ensure that parents/caregivers are provided adequate support and training to fulfil their responsibilities (art. 18) and that young children have access to quality early childhood education and care, and (where appropriate) specialist guidance/therapies." (Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 36(i))

The Committee has expressed particular concern when it appears no age has been fixed in law, or when the age is set too low. For example:

"The Committee is particularly concerned that the age at which children enter the criminal justice system is low with the age of criminal responsibility still set at 8 years in Scotland and at 10 years in the rest of the State Party... In particular, the Committee recommends that the State Party:... Considerably raise the minimum age of criminal responsibility;..." (United Kingdom CRC/C/15/Add.188, paras. 59 and 62(a))

More recently, the Committee has proposed that the age should be set at "an internationally acceptable level":

"... The Committee is deeply concerned that the minimum age of criminal responsibility is generally set at the very low level of 7 to 10 years, depending upon the state... While acknowledging the fact that the federal Government is planning to harmonize the age of criminal liability and raise it in all the states to 10 years, the Committee believes that this age is still too low." (Australia CRC/C/15/Add.79, paras. 11 and 29)

When it examined Australia's combined Second and Third Reports, the Committee commented:

"Furthermore, the Committee is concerned that ... the age of criminal responsibility, set at 10 years, is too low, although there is a presumption against criminal responsibility until the age of 14 (common law doli incapax);..."

It recommended that Australia should:

"Consider raising the minimum age of criminal responsibility to an internationally acceptable level;..." (Australia CRC/C/15/Add.268, paras. 73 and 74)





It has expressed concern where, although a high age has been designated, children below that age are still being held criminally responsible:

"... While noting that the minimum age for criminal responsibility is set at 16, the Committee is concerned that children under 16 are nevertheless held criminally responsible via a juvenile court procedure..."

"... the Committee recommends that the State Party:

... With regard to the minimum age of criminal responsibility, make sure that children under 16 years of age who have committed an offence and are dealt with via the present procedure only face protective and educative measures;..." (Liberia CRC/C/15/Add.236, paras. 66 and 68)

When it examined Chile's Initial Report, it recommended that the State should establish a legal system of administration of juvenile justice and that

"... such a legal system should also address the important question of the minimum age of criminal responsibility, particularly in the light of the best interests of the child..." (Chile CRC/C/15/Add.22, para. 17)

When it examined Chile's Second Report, the Committee was concerned

"... at the fact that the criminal law and procedure for adults can be applied also to children aged between 16 and 18 who acted with discernment and that the Committee's previous recommendation on addressing the question of the minimum age of criminal responsibility ... was not implemented. "In line with its previous recommendation..., the Committee recommends that the State Party: ... (b) Address the question of the minimum age of criminal responsibility in light of article 40, paragraph 3(a);..." (Chile CRC/C/15/Add.173, paras. 53 and 54)

There must be no discrimination in the age, for example between girls and boys, or between different regions of the country.

The Committee has welcomed a proposal to set the age at 18:

"... The Committee welcomes the information provided by the State Party that the new draft children's decree will set the age limit for criminal responsibility at 18." (Nigeria CRC/C/15/Add.61, para. 39)

"(b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected"

The Committee's General Comment No. 10 on "Children's rights in Juvenile Justice" places

particular emphasis on the importance of diversion and on States having a variety of dispositions available such as care, guidance and supervision orders, counselling, probation, foster care, educational and training programmes and other alternatives to institutional care. But it also emphasizes the need for full respect for human rights and necessary legal safeguards in any diversion process. Diversion should only be proposed where there is convincing evidence that the child has committed the alleged offence and voluntarily acknowledges responsibility without intimidation or pressure; this acknowledgement must not be used against the child in any subsequent legal proceedings. The child must freely and willingly consent in writing to the diversion. The completion of the diversion should result in a definite and final closure of the case (CRC/C/GC/10, para. 13).

The "Beijing Rules" expands on the encouragement of diversion from judicial proceedings in rule 11:

- (1) Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14(1) below.
- (2) The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.
- (3) Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.
- (4) In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision, and guidance, restitution, and compensation of victims."

The official commentary on the "Beijing Rules" notes that: "Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practised on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence). In many cases, non-intervention would be the

best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.

“As stated in rule 11(2), diversion may be used at any point of decision-making – by the police, the prosecution or other agencies such as the courts, tribunals, boards or councils. It may be exercised by one authority or several or all authorities, according to the rules and policies of the respective systems and in line with the present Rules. It may not necessarily be limited to petty cases, thus rendering diversion an important instrument.

“Rule 11(3) stresses the important requirement of securing the consent of the young offender (or the parent or guardian) to the recommended diversionary measure(s). (Diversion to community service without such consent would contradict the Abolition of Forced Labour Convention). However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process.

“Rule 11(4) recommends the provision of viable alternatives to juvenile justice processing in the form of community-based diversion. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed (for example first offence, the act having been committed under peer pressure, etc.)”

The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) is also relevant to this provision of article 40 of the Convention and the following provision, as is the “Basic Principles on the use of restorative justice programmes in criminal matters” (Economic and Social Council resolution 2002/12). The Rules do not refer specifically to juveniles, but state that they should be applied without discrimination

based on age. They provide minimum safeguards for persons subject to alternatives to imprisonment.

“A variety of dispositions such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence”: **article 40(4)**

In addition to this provision, article 37 emphasizes that restriction of liberty of children must only be used as a last resort and for the shortest appropriate period, and it bars capital punishment, life imprisonment without possibility of release, and any cruel, inhuman or degrading treatment or punishment (see article 37, page 547).

Paragraph 4 of article 40 requires that alternatives to institutional care must be available, to ensure that sentencing is consistent with the aims of juvenile justice and the general principles of the Convention.

The “Beijing Rules” sets more detailed “Guiding principles in adjudication and disposition” (rule 17):

“(1) The disposition of the competent authority shall be guided by the following principles:

(a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society...

(d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case...”

(The remaining principles in rule 17 relate to restriction of liberty, capital punishment and corporal punishment; see article 37, page 547.)



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

Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 40, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 40 is relevant to **departments of justice, home affairs, social welfare, education, health**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 40 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 40 likely to include the training of the **judiciary, lawyers, police, and all others working in the juvenile justice system, and in support of systems of diversion and prevention**)?

• Specific issues in implementing article 40

Does legislation, policy and practice in the State uphold the right of every child in the jurisdiction alleged as, accused of or recognized as having infringed the penal law to be treated in a manner which

- is consistent with the promotion of the child's sense of dignity and worth?
- reinforces the child's respect for fundamental human rights and for the fundamental freedoms of others?
- takes into account the child's age?
- takes into account the desirability of promoting the child's reintegration?
- takes into account the desirability of the child assuming a constructive role in society?
- In planning its system of juvenile justice, has the State had regard to the relevant United Nations rules and guidelines and to other relevant international instruments?



How to use the checklist, see page XIX

- Does legislation ensure that children cannot come into the criminal justice system because of acts or omissions that were not prohibited by national or international law at the time they were committed?

Does legislation, policy and practice in the State guarantee to any child alleged as or accused of having infringed the penal law the right

- to be presumed innocent until proved guilty according to the law?

to be informed of the charges against him or her

- promptly?
- directly?
- if appropriate through parents and guardians?

in the preparation and presentation of his defence, to have appropriate

- legal assistance?
- other assistance?

to have the matter determined

- without delay?
- by a competent and impartial authority or judicial body?
- in a fair hearing (according to international instruments, including the "Beijing Rules")?
- in the presence of legal and other appropriate assistance?
- in the presence – unless judged not to be in the child's best interest, and taking account of the child's age or situation – of parents or legal guardians?
- in the child's own presence?

not to be compelled

- to give testimony?
- to confess guilt?

to be able

- to examine or have examined adverse witnesses?
- to obtain the participation and examination of witnesses on his or her behalf under conditions of equality?

if considered to have infringed the criminal law, to have a review by a higher, competent, independent and impartial authority or judicial body according to law,

- of the decision?
- of any measures imposed in consequence thereof?

- to have the free assistance of an interpreter if the child cannot understand or speak the language used?

- to have his or her privacy fully respected at all stages of the proceedings?

- Are hearings involving children open to the public?
- Are there appropriate limits on press reporting of such hearings and their results?
- Does legislation ensure that there are no circumstances in which the identity of a child alleged as, accused of or recognized as having infringed the penal law can be disclosed?



How to use the checklist, *see page XIX*

- Is there a system of juvenile justice in the State distinctive from that relating to adults?
- Are all children up to 18 years of age alleged as, accused of or recognized as having infringed the penal law in the jurisdiction, without exception, dealt with through the system of juvenile justice?

Does the juvenile justice system include, specifically for such children, distinct

- laws?
- procedures?
- authorities?
- institutions?
- disposals?
- Is a minimum age defined in law below which children are presumed not to have the capacity to infringe the criminal law?
- If such an age is defined, are there no circumstances in which a child below that age can be alleged as, accused of or recognized as having infringed the criminal law?
- Does legislation, policy and practice provide measures for dealing with children alleged as, accused of or recognized as having infringed the penal law without resorting to judicial proceedings?
 - If so, do safeguards exist for the child who believes him/herself to be innocent?

Are a variety of dispositions available, such as

- care orders?
 - guidance and supervision orders?
 - diversion to mental health treatment?
 - victim reparation/restitution?
 - counselling?
 - probation?
 - foster care?
 - education?
 - vocational training courses?
 - any other alternatives to institutional care?
- Does legislation, policy and practice ensure that children are dealt with in a manner
- appropriate to their well-being?
- proportionate to
- their circumstances?
 - the offence?

How to use the checklist, see page XIX



Reminder: The Convention is indivisible and its articles interdependent.
Article 40 should not be considered in isolation.

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in the jurisdiction without discrimination on any ground

Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children

Article 6: right to life and maximum possible survival and development

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

Closely related articles

Articles whose implementation is particularly related to that of article 40 include:

Article 16: right to privacy

Article 19: protection from all forms of violence

Article 20: alternative care

Article 25: periodic review of placement/treatment

Article 37: prohibition of death sentence and life imprisonment; limits on restriction of liberty, etc.

Article 38: armed conflict

Article 39: rehabilitative care for victims



Respect for existing human rights standards

article

41

Text of Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State Party; or*
- (b) International law in force for that State.*

Article 41 ensures that the Convention's standards do not undermine any provisions "more conducive to the realization of the

rights of the child" that are in national or in international law in force in a particular State. ■

Summary

Protecting existing standards

During the drafting of the Convention on the Rights of the Child, article 41 evolved from a suggestion that there should be an article relating to the applicability of provisions of other international instruments, in particular the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. During the drafting process it was broadened to cover “international law in force”, and the discussion indicated that “international law” was to be given broad interpretation, covering customary international law (E/CN.4/1989/48, pp. 116 to 119, etc.; see Detrick, pp. 521 *et seq.*).

A key 1986 United Nations General Assembly resolution (resolution 41/120) includes guidelines relating to the elaboration of new international instruments. It urges Member States, when developing new international human rights standards, to give due consideration to the established international legal framework, to avoid undermining existing standards in any way.

The Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights in 1993, recalls this resolution, and “recognizing the need to maintain consistency with the high quality of existing international standards and to avoid proliferation of human rights instruments ... calls on the United Nations human rights bodies, when considering the elaboration of new international standards, to keep those guidelines in mind, to consult with human rights treaty bodies on the necessity for drafting new standards and to request the Secretariat to carry out technical reviews of proposed new instruments.” (A/CONF.157/23, p. 14)

One example of the Committee on the Rights of the Child making reference to article 41 occurred in the report of its Day of General Discussion on “Children in armed conflict”, when it reminded that article 41

“... invites States Parties to always apply the norms which are more conducive to the realization of the rights of the child, contained either in applicable international law or in national legislation.” (Committee on the Rights of the Child, Report on the second session, September/October 1992, CRC/C/10, para. 68)

In this particular case, the Committee was encouraging States to refrain from recruiting children under 18 into armed forces. There was a dispute during the drafting of article 38 that it undermined existing standards of protection (see article 38, page 574 for further discussion). The Optional Protocol on the involvement of children in armed conflict improves the position on recruitment, but it still falls short of the desired goal of no recruitment, conscription or direct part in hostilities for under-18s:

Each of the Optional Protocols to the Convention on the Rights of the Child includes articles similar to article 41: article 5 of the Optional Protocol on the involvement of children in armed conflict states: “Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child”. There is a similar provision in article 11 of the Optional Protocol on the sale of children, child prostitution and child pornography (for text, see Appendix 2, page 695).

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

Implementation Checklist

- Has there been a review of national legislation to consider whether it includes or could include provisions more conducive to the rights of the child than those of the Convention?
- Has there been a review of applicable international law to consider whether it includes provisions more conducive to the rights of the child than those of the Convention?

Making Convention widely known



Text of Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Rights are of little use to people unless they are aware of them. Article 42 confirms States Parties' obligation to make the Convention on the Rights of the Child known "by appropriate and active means" to adults and children. The Committee on the Rights of the Child has underlined the importance of disseminating the Convention's principles and provisions to all sectors of the population. In addition, it has suggested that the Convention

should be incorporated into school curricula and into the training of all those who work with or for children.

The two Optional Protocols to the Convention, on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict each contain provisions similar to article 42 (see pages 695 and 692). ■

Summary

A “comprehensive strategy” for dissemination

In its *Guidelines* for Initial and Periodic Reports, the Committee on the Rights of the Child has included the implications of article 42 under “General Measures of Implementation”, linking it to article 4. In addition, under article 44(6) the Committee emphasizes the importance of widely publicizing at country-level States Parties’ Initial and Periodic Reports, reports of discussions with the Committee and the Committee’s Concluding Observations (see article 44(6), page 652).

In its comments on States Parties’ reports, the Committee has emphasized that dissemination can achieve a variety of purposes:

- ensuring the visibility of children;
- enhancing respect for children;
- reaffirming the value of children’s fundamental rights;
- enhancing democratic institutions;
- achieving national reconciliation;
- encouraging the protection of the rights of children belonging to minority groups;
- changing negative attitudes towards children;
- combating and eradicating existing prejudices against vulnerable groups of children and harmful cultural practices.

The Committee consolidated its advice to States in 2003, in its General Comment No. 5 on “General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)”:

“Individuals need to know what their rights are. Traditionally in most, if not all, societies children have not been regarded as rights holders. So article 42 acquires a particular importance. If the adults around children, their parents and other family members, teachers and carers do not understand the implications of the Convention, and above all its confirmation of the equal status of children as subjects of rights, it is most unlikely that the rights set out in the Convention will be realized for many children.

“The Committee proposes that States should develop a comprehensive strategy for disseminating knowledge of the Convention throughout society. This should include information on those bodies – governmental and independent – involved in implementation and monitoring and on how to contact them. At the most basic level, the text of the Convention needs to be made widely available in all languages (and the Committee

commends the collection of official and unofficial translations of the Convention made by OHCHR). There needs to be a strategy for dissemination of the Convention among illiterate people. UNICEF and NGOs in many States have developed child-friendly versions of the Convention for children of various ages – a process the Committee welcomes and encourages; these should also inform children of sources of help and advice.

“Children need to acquire knowledge of their rights and the Committee places special emphasis on incorporating learning about the Convention and human rights in general into the school curriculum at all stages. The Committee’s General Comment No. 1 (2001) entitled ‘The aims of education’ (art. 29, para. 1), should be read in conjunction with this. Article 29, paragraph 1, requires that the education of the child shall be directed to ‘... the development of respect for human rights and fundamental freedoms...’ The General Comment underlines: ‘Human rights education should provide information on the content of human rights treaties. But children should also learn about human rights by seeing human rights standards implemented in practice whether at home, in school or within the community. Human rights education should be a comprehensive, lifelong process and start with the reflection of human rights values in the daily life and experiences of children.

“Similarly, learning about the Convention needs to be integrated into the initial and in-service training of all those working with and for children... The Committee reminds States Parties of the recommendations it made following its meeting on general measures of implementation held to commemorate the tenth anniversary of adoption of the Convention [Report on the twenty-second session, September/October 1999, CRC/C/90, para. 291], in which it recalled that ‘dissemination and awareness-raising about the rights of the child are most effective when conceived as a process of social change, of interaction and dialogue rather than lecturing. Raising awareness should involve all sectors of society, including children and young people. Children, including adolescents, have the right to participate in raising awareness about their rights to the maximum extent of their evolving capacities’.

“The Committee recommends that all efforts to provide training on the rights of the child be practical, systematic and integrated into regular professional training in order to maximize its impact and sustainability. Human rights training should use participatory methods, and equip professionals with skills and attitudes that enable them to interact with children and young people in a manner that respects their rights, dignity and self-respect.



“The media can play a crucial role in the dissemination of the Convention and knowledge and understanding of it and the Committee encourages their voluntary engagement in the process, which may be stimulated by governments and by NGOs.”

(Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, paras. 66 to 70)

In its General Comment No. 9 on “The rights of children with disabilities”, the Committee notes that knowledge of the Convention on the Rights of the Child and the specific provisions devoted to children with disabilities is a necessary and powerful tool to ensure the realization of their rights:

“States Parties are encouraged to disseminate knowledge by, inter alia, conducting systematic awareness campaigns, producing appropriate material such as a child friendly version of the Convention in print and Braille and using the mass media to foster positive attitudes towards children with disabilities.

“As for professionals working with and for children with disabilities, training programmes must include targeted and focused education on the rights of children with disabilities as a pre-requisite for qualification. These professionals include but are not limited to policy makers, judges, lawyers, law enforcement officers, educators, health workers, social workers and media personnel among others.” (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/GC/9, paras. 15 and 16)

In its General Comment No. 7 on “Implementing child rights in early childhood”, the Committee proposes that States should include human rights education within early childhood education (in the light of article 29 and the Committee’s first General Comment on “The aims of education”):

“Such education should be participatory and empowering to children, providing them with practical opportunities to exercise their rights and responsibilities in ways adapted to their interests, concerns and evolving capacities. Human rights education of young children should be anchored in everyday issues at home, in childcare centres, in early education programmes and other community settings with which young children can identify.”

The Committee also proposes appropriate training:

“... States Parties are encouraged to undertake systematic child rights training for children and their parents, as well as for all professionals working for and with children, in particular parliamentarians, judges, magistrates, lawyers, law enforcement officials, civil servants, personnel in institutions and places of detention for

children, teachers, health personnel, social workers and local leaders. Furthermore, the Committee urges States Parties to conduct awareness-raising campaigns for the public at large.” (Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/GC/7/Rev.1, paras. 33 and 41)

The Committee proposes both an educational and a monitoring role for independent national human rights institutions in its General Comment No. 2 on “The role of independent national human rights institutions in the promotion and protection of the rights of the child”:

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

“Assist in the formulation of programmes for the teaching of, research into and integration of children’s rights in the curricula of schools and universities and in professional circles;...

“Undertake human rights education which specifically focuses on children (in addition to promoting general public understanding about the importance of children’s rights);...” (Committee on the Rights of the Child, General Comment No. 2, 2002, CRC/GC/2002/2, para. 19(m) to (o))

During discussion of Slovenia’s Initial Report, a Committee member was reported as noting that the Convention “was addressed not only to all levels of government and society as a whole, but also to children themselves. Although most countries reporting to the Committee claimed that sufficient information was provided to children, schools and teacher training institutions to create awareness of the Convention and provided documentation in support of those claims, members of the Committee in their travels had found that, in general, the majority of children they met were unaware of the rights of the child or of the text of the Convention.” (Slovenia CRC/C/SR.337, para. 20)

Training concerning Convention

The Committee has proposed specific training courses (both initial training and in-service retraining) for those working with children, mentioning in a variety of recommendations the following groups as targets for such training: judges, lawyers, law enforcement officials, personnel in detention/correctional facilities,





immigration officers, United Nations peace-keeping forces and military personnel, teachers, social workers, those providing psychological support to families and children, personnel and professionals working with or for children, those working in institutions for children, including welfare institutions, doctors, health and family-planning workers, government officials and decision makers, personnel entrusted with data collection under the Convention, and so forth. The *Guidelines for Periodic Reports (Revised 2005)* asks States to include in their reports statistical data on training on the Convention for professionals working with and for children, including, but not limited to:

- (a) judicial personnel, including judges and magistrates;
- (b) law enforcement personnel;
- (c) teachers;
- (d) health-care personnel;
- (e) social workers.

(CRC/C/58/Rev.1, Annex, para. 3)

The Committee on the Rights of the Child has recommended specialized training, for example, in its 2005 General Comment No. 6 on “Treatment of unaccompanied and separated children outside their country of origin” (CRC/GC/2005/6, paras. 95 to 97).

Training proposed in the Committee’s *Guidelines for Periodic Reports*

The original *Guidelines for Periodic Reports* prepared by the Committee on the Rights of the Child underlines repeatedly the importance of training as a strategy for implementation of the Convention. The *Guidelines* requests information on training programmes and the content of training in relation to the following:

Article 3 The extent to which the principle of the “best interests of the child” is included in the training of professionals dealing with children’s rights. (para. 39)

Article 4 Measures taken to provide education on the Convention to public officials, as well as to train professional groups working with and for children, such as teachers, law enforcement officials, including police, immigration officers, judges, prosecutors, lawyers, defence forces, medical doctors, health workers and social workers. The extent to which the principles and provisions of the Convention have been included in professional training curricula and codes of conduct or regulations. (para. 22)

Article 5 Parental education programmes and training activities provided to relevant professional groups (for example social workers), including information on any evaluation of effectiveness.

Measures to convey knowledge and information about child development and the evolving capacities of the child to parents or other persons responsible for the child. (para. 63)

Article 7 Measures taken to provide adequate training to personnel working on registration of births. (para. 50)

Article 12 Measures to train professionals working with children to encourage children to exercise their right to express their views, and to give children’s views due weight. Details of child development courses provided for: judges in general, family court judges, juvenile court judges, probation officers, police officers, prison officers, teachers, health workers and other professionals. Details of the number of courses about the Convention included in the curricula of: law schools, teacher training schools, medical schools and institutions, nursing schools, social work schools, psychology departments and sociology departments. (para. 46)

Article 19 Special training provided for relevant professionals in the protection of the child from all forms of violence, abuse, neglect, etc. (para. 89)

Article 22 Training courses for staff working with refugee children. (para. 120)

Article 23 Measures taken to ensure adequate training, including specialized training, for those responsible for the care of children with disabilities, including at the family and community levels and within relevant institutions. (para. 92)

Article 24 Campaigns, programmes, etc., developed to provide basic knowledge, information and support to the general population, including in particular parents and children, on child health, nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents. Measures adopted to improve the system of education and training of health personnel. (para. 95)

Article 28 Steps taken to enhance the competence of teachers and to ensure quality of teaching. (para. 106)

Article 29 Training provided to teachers to prepare them to direct teaching to the aims of education set out in article 29. (para. 113)

Article 34 Appropriate training for special units of law enforcement officials and police liaison officers dealing with children who have been sexually abused or exploited. (para. 159)

Article 35 Relevant training activities provided to competent authorities concerned with abduction, sale or traffic in children. (para. 161)

Article 36 Training activities for professional groups working with or for children on forms of exploitation prejudicial to the child's welfare. (para. 164)

Article 37(a) Educative and training activities developed, particularly with personnel in institutions, services and facilities working with and for children, aimed at preventing any form of ill-treatment. (para. 61)

Article 38 Appropriate training for professionals concerned with the protection of children affected by armed conflict, including the rules of international humanitarian law. (para. 123)

Article 40 Training activities for all professionals involved with the system of juvenile justice, including judges, prosecutors, lawyers, law enforcement officials, immigration officers and social workers, on the provisions of the Convention and the United Nations rules and guidelines in the field of juvenile justice. (para. 136)

(CRC/C/58)



Examination of States' reports

The Committee has stressed in various Concluding Observations the need for a “comprehensive strategy” for dissemination, an “ongoing and systematic approach”, a “permanent information campaign”, and “systematic and continuous steps”. It invariably highlights dissemination of information on children’s rights and training as key strategies for implementation, requiring both comprehensive and innovative approaches. It emphasizes the need to ensure dissemination of the Convention in all relevant languages.

The Committee encourages States to have recourse to international cooperation and the help of bodies such as the Office of the High Commissioner for Human Rights and UNICEF. It often identifies particular hard-to-reach groups of children, and particular groups of adults needing training. For example:

“The Committee notes with appreciation the efforts made by the State Party in translating the Convention on the Rights of the Child and the Children’s Act into six Ghanaian widely spoken languages to facilitate its appreciation

and use among the general public. It also notes the efforts made in carrying out sensitization programmes, including through civil society organizations with the assistance of the vibrant media. The Committee is, however, of the opinion that these measures are not implemented in an ongoing, comprehensive and systematic basis.

“The Committee recommends that the State Party strengthen its efforts to ensure that the provisions of the Convention are widely known and understood by adults and children. It also recommends the reinforcement of adequate and systematic training of all professional groups working for and with children, in particular law enforcement officials, teachers, including teachers in rural areas, religious and traditional leaders, health personnel and social workers, personnel in childcare institutions as well as the media.” (Ghana CRC/C/GHA/CO/2, paras. 21 and 22)

“The Committee recommends that the State Party continue and strengthen its efforts to ensure that the provisions and the principles of the Convention are widely recognized and understood by adults and children alike. In this regard, it encourages the State Party to



continue to disseminate and raise awareness of the Convention among children and adults, particularly in remote areas. The Committee also invites the State Party to continue to develop creative and child-friendly methods of promoting and teaching the Convention.” (Thailand CRC/C/THA/CO/2, para. 23)

“The Committee encourages the State Party to pursue efforts to promote children’s rights education in the country, including initiatives to reach those vulnerable groups who are illiterate or without formal education.” (India CRC/C/15/Add.115, para. 25)

When it examined India’s Second Report, it expanded on this:

“In line with its previous recommendations ..., the Committee recommends that the State Party:

(a) Strengthen its efforts to disseminate the principles and provisions of the Convention, and make those efforts systematic, in order to sensitize society about children’s rights through social mobilization;

(b) Systematically involve parliamentarians and community and religious leaders in its programmes to eradicate customs and traditions that impede the implementation of the Convention, and adopt creative measures of communications for illiterate people and for people in remote areas;

(c) Undertake systematic education and training on the provisions of the Convention for all professional groups working for and with children, in particular, judges, lawyers, law enforcement officials, civil servants, municipal and local workers, personnel working in institutions and places of detention for children, teachers, health personnel, including psychologists, and social workers;

(d) Further promote human rights education, including the rights of the child, in primary and secondary school curricula as well as in the curricula for teacher training;

(e) Seek technical assistance from, among others, OHCHR, UNESCO and UNICEF.” (India CRC/C/15/Add.228, para. 24)

In examination of successive reports from States, the Committee often congratulates them on a variety of initiatives in disseminating knowledge of rights, but finds these still inadequate and proposes additional actions. For example, when it examined Lebanon’s Second Report, it stated:

“While noting with appreciation the efforts undertaken by the State Party to publicize the principles and provisions of the Convention widely, including the convening of a Children’s Parliament and press conference and integration of the Convention in school curricula, as well as the interest of the media, the Committee is of the opinion that the measures to create widespread awareness and

understanding of the principles and provisions of the Convention need to be further strengthened and implemented in an ongoing, systematic basis.

“The Committee reiterates its recommendation ... that the State Party strengthen its awareness-raising efforts and encourages the State Party to undertake systematic education and training on the rights in the Convention for all professional groups working for and with children, in particular parliamentarians, judges, lawyers, law enforcement officials, civil servants, municipal workers, personnel working in institutions and places of detention for children, teachers, health personnel, including psychologists, social workers, religious leaders, as well as children and their parents. Technical assistance from, among others, OHCHR and UNICEF could be requested in this regard.” (Lebanon CRC/C/15/Add.169, paras. 19 and 20)

When it examined Lebanon’s Third Report, it had further recommendations:

“The Committee welcomes the State Party’s efforts to promote awareness of the rights of the child and to disseminate the Convention in close collaboration with UNICEF and non-governmental organizations. Nevertheless, the Committee considers that education for children and the public at large and training activities for professional groups on children’s rights need ongoing attention.

“The Committee recommends that the State Party strengthen its efforts to disseminate the Convention both to children and to the broader public, including appropriate material specifically for children translated in the different languages spoken in Lebanon, including those spoken by migrant and refugee children. In addition, it recommends that the State Party undertake systematic education and training programmes on the provisions of the Convention and the Optional Protocol on the sale of children, child prostitution and child pornography for all professional groups working for and with children, such as judges, lawyers, law enforcement officials, civil servants, teachers, and health personnel including psychologists and social workers.” (Lebanon CRC/C/LBN/CO/3, paras. 23 and 24)

Similarly, examining Second Reports from Burkina Faso and Saudi Arabia, the Committee commented:

“The Committee is aware of the measures undertaken to promote widespread awareness of the principles and provisions of the Convention and welcomes the establishment of a Ministry for the Promotion of Human Rights. The Committee is of the opinion that these measures need to be strengthened by providing the necessary resources. In this respect, the Committee is concerned at the

lack of a systematic plan to introduce training and awareness among professional groups working for and with children.

"In line with its previous recommendations..., the Committee recommends that the State Party:

- (a) Strengthen its efforts and systematize the dissemination of the principles and provisions of the Convention as a measure to sensitize society to children's rights through social mobilization;*
- (b) Systematically involve community leaders in its programmes in order to fight against customs and traditions which impede the implementation of the Convention, and adopt creative measures of communications for illiterate people;*
- (c) Undertake systematic education and training in the provisions of the Convention for all professional groups working for and with children, in particular parliamentarians, judges, lawyers, law enforcement officials, civil servants, municipal and local workers, personnel working in institutions and places of detention for children, teachers, health personnel, including psychologists, and social workers;*
- (d) Make sure that the new Ministry for the Promotion of Human Rights is paying adequate attention to children's rights and their implementation throughout the State Party;*
- (e) Further promote human rights education, including the rights of the child, in school curricula, beginning in primary school, as well as in the curricula for teacher training;*
- (f) Seek technical assistance from, among others, OHCHR, UNESCO and UNICEF." (Burkina Faso CRC/C/15/Add.193, paras. 19 and 20)*

"With regard to article 42 of the Convention, the Committee notes with appreciation the State Party's efforts to disseminate the Convention, inter alia, through several programmes and activities of the Saudi National Commission for Childhood. Nevertheless, the Committee is concerned that professionals working with and for children and in particular the general public, including children and their parents and other caregivers, are not provided with sufficient information and systematic training in international human rights standards, including the rights of the child.

"The Committee recommends that the State Party:

- (a) Develop systematic and targeted human rights training programmes, including the principles and provisions of the Convention, for all professional groups working with and for children (such as judges, lawyers, law enforcement officials, including religious police (known as mutawwa) and other religious clerics, personnel working in institutions and places of detention for children, as well as teachers, health personnel and social workers);*
- (b) Seek innovative ways and methods to disseminate the Convention, including through a tailored communication strategy which links the Convention with existing positive values and traditions in Saudi society, and raise awareness of the rights of the child, including vulnerable children, among children and their parents and civil society;*
- (c) Develop and adopt a communication strategy in order to involve the media in the dissemination of the principles and provisions of the Convention; and*
- (d) Seek technical assistance from the Office of the United Nations High Commissioner for Human Rights (OHCHR) and UNICEF, among others, in this regard." (Saudi Arabia CRC/C/SAU/CO/2, paras. 19 and 20)*

The Committee is concerned where States' dissemination of the Convention is selective, for example, telling Bahrain:

"The Committee is concerned that the Convention has not been published in its entirety. In particular, that articles 11, 21, 22, 38, 41 to 54 have been deleted in the published text." (Bahrain CRC/C/15/Add.175, para. 17)

When the Committee examined the Second Reports of Latvia and Lithuania, it noted with appreciation that these States had translated and published the *Implementation Handbook for the Convention on the Rights of the Child*. It encouraged Lithuania to widely disseminate the *Implementation Handbook* and to disseminate the Convention further, including through incorporating human rights education in the curricula of both primary and secondary schools. (Latvia CRC/C/LVA/CO/2, para. 18; Lithuania CRC/C/LTU/CO/2, paras. 20 and 21)



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

Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 42, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 42 is relevant in particular to the **departments of education, social welfare, justice – but all departments should be involved**)?
 - identification of relevant non-governmental organizations/civil society partners?
 - a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?
- adoption of a strategy to secure full implementation
- which includes where necessary the identification of goals and indicators of progress?
 - which does not affect any provisions which are more conducive to the rights of the child?
 - which recognizes other relevant international standards?
 - which involves where necessary international cooperation?
- (Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)*
- budgetary analysis and allocation of necessary resources?
 - development of mechanisms for monitoring and evaluation?

• Specific issues in implementing article 42

Has the State taken active steps to make the provisions and principles of the Convention widely known throughout the population

- to adults?
- to children?
- Has the Convention, and information about its implications, been translated into all languages in use throughout the jurisdiction and appropriately disseminated?
- Has the Convention, and information about its implications, been disseminated in appropriate media for children with disabilities and adults?

Has the Convention and information about its implications been incorporated into the curriculum of

- all schools?
 - all other educational institutions?
- training courses – both initial and in-service – for those working with or for children, including
- judges?
 - lawyers?
 - law enforcement officials?



How to use the checklist, see page XIX

- personnel in detention/correctional facilities?
- immigration officers?
- military personnel and United Nations peacekeeping forces?
- teachers?
- social workers?
- those providing psychological support to families and children?
- those working in institutions for children, including welfare institutions?
- doctors, health and family planning workers?
- government officials and decision makers?
- personnel entrusted with data collection under the Convention?
- other personnel and professionals working with or for children?

Have programmes for dissemination of the Convention and its principles and provisions involved

- the mass media?
- appropriate NGOs and civil society?
- children's groups?
- Have steps been taken to encourage the understanding of the principles and provisions of the Convention by the mass media and by information and publishing agencies?

Has the State undertaken or commissioned research into awareness of the Convention and its principles and provisions among

- the general public?
- those working with or for children?
- children?

Reminder: The Convention is indivisible and its articles interdependent. Article 42 should not be considered in isolation. Article 42 requires dissemination of information to adults and children alike about all the principles and provisions of the Convention, in the light of the non-discrimination principle in article 2.



The Committee on the Rights of the Child

article

43

Text of Article 43

- 1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.*
- 2. The Committee shall consist of 18¹ experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.*
- 3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.*
- 4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.*
- 5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.*

¹ The General Assembly, in its resolution 50/155 of 21 December 1995, approved the amendment to article 43, paragraph 2, replacing the word “ten” with the word “eighteen”. The amendment entered into force on 18 November 2002 when it had been accepted by a two-thirds majority of the States Parties (128 out of 191).

6. *The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.*

7. *If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.*

8. *The Committee shall establish its own rules of procedure.*

9. *The Committee shall elect its officers for a period of two years.*

10. *The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.*

11. *The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.*

12. *With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from the United Nations resources on such terms and conditions as the Assembly may decide.*



Summary

A

rticle 43 sets out the monitoring role of the Committee on the Rights of

the Child, the procedures for electing its members and for its meetings. ■

Role of the Committee

The function of the Committee on the Rights of the Child is to provide an international mechanism for monitoring progress on implementation of the Convention on the Rights of the Child – in the words of the Convention: “For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the ... Convention” (article 43(1)). Its major tasks are to examine the Initial and Periodic Reports submitted to it by States Parties under article 44 of the Convention, and working with other human rights treaty bodies, United Nations agencies and other bodies to promote the Convention and the realization of the rights of the child.

Committee membership and election

The Committee comprises 18 “experts of high moral standing and recognized competence in the field covered by this Convention”. An amendment to article 43, to increase the number of members from 10 to 18, came into force in November 2002, when it had been accepted by a two-thirds majority of the States Parties to the Convention (128 out of 191). The General Assembly had approved the amendment in its resolution 50/155 of 21 December 1995. The amendment was proposed because of the substantial workload of the Committee, arising from the Convention’s rapid and almost universal ratification. The increase in membership enabled the Committee to operate in two chambers simultaneously for a period, thus examining more reports in each session and removing a backlog of unexamined reports which had built up (see article 44 for further details, page 643).

Members are elected to serve for a period of four years and are eligible for re-election if they are nominated again at the expiry of their term. Each State Party is entitled to nominate one of its nationals to stand for election. Elections are held every second year. At least four months prior to an election, the Secretary-General invites each State Party to nominate one person from among its nationals within two months. A list is prepared of all those nominated and an election by secret ballot is held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. The Convention requires that consideration be given in the elections to “equitable geographical distribution, as well as to the principal legal systems” (article 43(2)).

Members serve in a personal capacity. They do not represent their State or any organization. In the report on its second session, Committee members noted the importance of the independence of the elected experts:

“They recalled the provision of the Convention which states that members shall serve in their personal capacity; they reaffirmed that the mandate derives from the provisions and principles of the Convention on the Rights of the Child and that the Committee members are solely accountable to the children of the world. It was pointed out that, although elected by States Parties’ representatives, members do not represent their country, Government or any other organization to which they may belong. In view of the relevance of this consideration, and in order to ensure the principle of impartiality, the members of the Committee reiterated the desirability of not participating in the Committee’s discussions during the examination of the reports submitted by their own Governments. They also recognized that, when acting in the framework of the rights of the child, there is a need to clearly distinguish between their personal or professional role and their role as members of the Committee.” (Committee on the Rights of the Child, Report on the second session, September/October 1992, CRC/C/10, p. 33)

When a member joins the Committee he or she makes the following declaration: “I solemnly declare that I will perform my duties and exercise my powers as a member of the Committee on the Rights of the Child honourably, faithfully, impartially and conscientiously.”

If a member fails for whatever reason to complete a term of office, the State Party that nominated the member appoints another expert from among its nationals – subject to the approval of the Committee – to serve for the remainder of the term.

Rules of Procedure and officers

The Committee is responsible for establishing its own rules of procedure, and elects its officers for two years. According to the Provisional Rules of Procedure adopted by the Committee at its twenty-second meeting (first session) on 15 October 1991 (CRC/C/4) the officers to be elected are a chairperson, three vice-chairpersons and a rapporteur. The Rules were revised in 2005 to take account of the increase in number of members (CRC/C/4/Rev.1).

Meetings of the Committee

The Committee meets three times a year, each session being of three weeks duration (in January, May/June and September/October) at the Palais Wilson in Geneva, Switzerland. At these sessions it examines States Parties’ reports in discussion with government representatives and conducts any other formal business (including, for example, General Discussions). Immediately following each formal session, there is a one-week meeting



of a Working Group of Committee members (the “Pre-sessional Working Group”) to prepare for the following session. For details of the reporting process, see article 44, page 643.

Days of General Discussion

The Committee included in its Rules of Procedure the ability to devote meetings during its regular session to General Discussions on one specific article of the Convention or a related subject. The purpose is for the Committee to explore in depth with United Nations agencies, NGOs and individual experts particular issues, to improve its work in monitoring implementation, and to provide recommendations for States Parties and others.

Days of General Discussion have been held on:

- Children in armed conflict (5 October 1992)
- Economic exploitation of the child (4 October 1993)
- The role of the family in the promotion of the rights of the child (10 October 1994)
- The girl child (23 January 1995)
- Administration of juvenile justice (9 October 1995)
- The child and the media (7 October 1996)
- The rights of children with disabilities (6 October 1997)
- Children living in a world with AIDS (5 October 1998)
- Tenth anniversary of the Convention on the Rights of the Child commemorative meeting: achievements and challenges (the Committee co-organized with the Office of the High Commissioner for Human Rights a two-day workshop celebrating the tenth anniversary of adoption of the Convention on 30 September and 1 October 1999)
- Violence against children 1: State violence against children (first of two linked General Discussions, 22 September 2000)
- Violence against children 2: Violence against children, within the family and in schools (28 September 2001)
- The private sector as a service provider and its role in implementing child rights (20 September 2002)
- The rights of indigenous children (20 September 2003)
- Implementing child rights in early childhood (17 September 2004)

- Children without parental care (16 September 2005)
- The right of the child to be heard (15 September 2006)

(For recommendations adopted following these Days of General Discussion, see www.ohchr.org/english/bodies/crc/discussion.htm.)

General Comments

As with other treaty bodies, the Committee’s Rules of Procedure allow it to make General Comments “based on the articles and provisions of the Convention with a view to promoting its further implementation and assisting States Parties in fulfilling their reporting obligations”. It has adopted the following General Comments:

- The aims of education, article 29(1), No. 1, 2001, CRC/GC/2001/1
- The role of independent national human rights institutions in the promotion and protection of the rights of the child, No. 2, 2002, CRC/GC/2002/2
- HIV/AIDS and the rights of the child, No. 3, 2003, CRC/GC/2003/3
- Adolescent health and development in the context of the Convention on the Rights of the Child, No. 4, 2003, CRC/GC/2003/4
- General measures of implementation for the Convention on the Rights of the Child, No. 5, 2003, CRC/GC/2003/5
- Treatment of unaccompanied and separated children outside their country of origin, No. 6, 2005, CRC/GC/2005/6
- Implementing child rights in early childhood, No. 7, 2005, CRC/C/GC/7/Rev. 1
- The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28.2 and 37, *inter alia*), No. 8, 2006, CRC/C/GC/8
- The rights of children with disabilities, No. 9, 2006, CRC/C/GC/9
- Children's rights in Juvenile Justice, No. 10, 2007, CRC/C/GC/10

The Committee may also make general recommendations based on information received during the reporting process or from other sources. In 1998 it adopted a recommendation on children in armed conflict (CRC/C/80, p. 3) and in 1999 on the administration of juvenile justice (CRC/C/90, p. 3). At its thirty-seventh session, in September/October 2004, it adopted a recommendation on



“Children without parental care”, proposing that the United Nations Commission on Human Rights (now the Human Rights Council) should consider establishing a working group to prepare a draft of United Nations Guidelines for the protection and alternative care of children without parental care by 2008. The Committee has adopted other recommendations concerning the reporting process under the Convention and the two Optional Protocols (see article 44, page 643).

Documentation of activities

The Office of the High Commissioner for Human Rights is the Secretariat for the Committee on behalf of the Secretary-General of the United Nations. Summary Records are prepared for all public meetings of the Committee (all meetings are held in public unless the Committee decides otherwise). The Initial and Periodic Reports of States Parties, Concluding Observations of the Committee, Summary Records and Reports on the Committee’s sessions are generally made available in the Committee’s three working languages (English, French and Spanish); in addition

the Committee may decide to make particular documents available in one or more of the other “official” languages of the Convention (Arabic, Chinese and Russian).

The Committee has a dedicated website at www.ohchr.org/english/bodies/crc/index.htm. Documents available now also normally include the list of issues sent to States in advance of the examination and any responses received, the text of the speech of the head of the state delegation and list of members of the delegation.

The Committee’s official documents are available from:

Secretariat to the Committee on the Rights of the Child, Office of the High Commissioner for Human Rights, office 1-065, Palais des Nations, 8-14 Avenue de la Paix, 1211 Geneva 10, Switzerland (fax 00 41 22 917 9022).

Also from the Distribution and Sales Section, Palais des Nations, 8-14 Avenue de la Paix, 1211 Geneva 10, Switzerland.



The Committee in 2007

The members of the Committee, as of 1st March 2007, with their nominating State and the date their term of office expires, are as follows:

Name of member	Nominating State	Term of office
Ms. Agnes Akosua AIDOO	Ghana	02.2011
Ms. Ghalia Mohd Bin Hamad AL-THANI	Qatar	02.2009
Ms. Joyce ALUOCH	Kenya	02.2009
Mr. Luigi CITARELLA	Italy	02.2011
Mr. Kamel FILALI	Algeria	02.2011
Ms. Maria HERCZOG	Hungary	02.2011
Ms. Moushira KHATTAB	Egypt	02.2011
Mr. Hatem KOTRANE	Tunisia	02.2011
Mr. Lothar Friedrich KRAPPMANN	Germany	02.2011
Ms. Yanghee LEE (Chairperson)	Republic of Korea	02.2009
Ms. Rosa María ORTIZ	Paraguay	02.2011
Mr. David Brent PARFITT	Canada	02.2009
Mr. Awich POLLAR	Uganda	02.2009
Mr. Dainius PURAS	Lithuania	02.2011
Mr. Kamal SIDDIQUI	Bangladesh	02.2009
Ms. Lucy SMITH	Norway	02.2009
Ms. Nevena VUCKOVIC-SAHOVIC	Serbia	02.2009
Mr. Jean ZERMATTEN	Switzerland	02.2009



Reporting obligations of States Parties



Text of Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:
 - (a) Within two years of the entry into force of the Convention for the State Party concerned,
 - (b) Thereafter every five years.
2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.
3. A State Party which has submitted a comprehensive initial report to the Committee need not in its subsequent reports submitted in accordance with paragraph 1(b) of the present article repeat basic information previously provided.
4. The Committee may request from States Parties further information relevant to the implementation of the Convention.
5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.
6. States Parties shall make their reports widely available to the public in their own countries.

Article 44 sets out the obligations of States Parties to the Convention on the Rights of the Child to report to the Committee on the Rights of the Child, within two years of ratification, and then every five years. The Committee may request further information. The Committee adopts a

report at the end of each of the three sessions it holds each year and reports on its activities every two years to the General Assembly, through the Economic and Social Council. States Parties are required to make their reports widely available to the public in their own countries. ■

Summary

Initial reports and periodic reports

The Convention comes into force in a State Party on the thirtieth day after the State has formally adopted the Convention (deposited its instrument of ratification or accession with the Secretary-General of the United Nations). The State Party then acquires obligations to report to the Committee:

- within two years of the entry into force of the Convention (initial report);
- thereafter every five years (periodic reports) (article 44(1)(a) and (b)).

Periodic reports become due five years after the due date for delivery of the initial report; in principle, delay in submitting an initial report, or delay in the examination of the report by the Committee, does not alter the date on which the next report is due.

However, during its twenty-ninth and thirty-second sessions (January/February 2002 and January 2003) the Committee on the Rights of the Child adopted recommendations which acknowledge the delays occurring in submission and in examination of reports. In the recommendations, the Committee adopts special rules allowing exceptionally for the combining of second and third, or third and fourth reports, emphasizing that these rules apply only on the basis of an exceptional measure taken for one time only by a State Party in an attempt to provide an opportunity for them to respect the strict reporting periodicity foreseen in the Convention (article 44(1)). The Committee notes that it will inform States Parties in the related Concluding Observations about the deadline for the submission of their second and, where appropriate, following periodic reports. The recommendation states that the Committee has decided to adopt the following rules:

“(a) When the second periodic report is due within the year following the dialogue with the Committee, the State Party shall be requested to submit that report combined with the third one; this rule also applies, *mutatis mutandis*, when a similar situation occurs with the third and fourth periodic reports.

“(b) When the second periodic report is already due at the time of the dialogue and the third report is due two years or more after the dialogue with the State Party, the State Party shall be requested to submit the combined second and third reports at the time when the third report is due, as prescribed under the terms of the Convention; this rule also applies, *mutatis mutandis*, in cases when

the second and third reports are due at the time of the dialogue;...” (Report on the twenty-ninth session, January/February 2002, CRC/C/114, p. 5)

At its thirty-second session, in January 2003, it adopted a further recommendation, reiterating its decision to inform States Parties in Concluding Observations of the deadline for the submission of their second and, where appropriate, following periodic reports, and adopting a further additional rule: “When the second periodic report is due between one and two years following the dialogue with the Committee, the State Party shall be requested to submit that report combined with the third one.” But the Committee urges the State Party, in order to reduce the delay, “to submit its consolidated second and third report 18 months before its due date. This rule also applies, *mutatis mutandis*, when a similar situation occurs with the third and fourth periodic reports”. The Committee’s recommendations stress that these rules apply only on the basis of an exceptional measure taken for one time only by a State Party in an attempt to provide an opportunity for them to respect the strict reporting periodicity foreseen in the Convention (article 44(1)). (Report on the thirty-second session, January 2003, CRC/C/124, pp. 4 and 5)

At its thirtieth session, in May 2002, it adopted another recommendation, on the content and size of States’ reports. It requests States Parties to submit periodic reports that are “concise, analytical and focusing on key implementation issues”, not exceeding 120 regular-size pages. It also requests States to focus in particular on two aspects of implementation:

“(a) informing the Committee about progress made in the enjoyment of human rights by children, factors and difficulties affecting the degree of fulfilment of obligations under the Convention, and measures taken to implement the Committee’s Concluding Observations – by explicitly referring to them – adopted with respect to the previous report of a State Party;

(b) Informing the Committee about fundamental developments in the State Party during the reporting period with regard to the human rights of children. In this regard, States Parties should avoid repeating information already contained in previous reports submitted to the Committee...”

(Report on the thirtieth session, May/June 2002, CRC/C/118, pp. 4 and 5)

The Committee recommends that “in addition to information on legislative developments and the situation *de jure*, States Parties give due attention in their periodic reports to analysing the situation



in the State Party *de facto*, including information on concrete measures taken to enhance the implementation of domestic and international legal provisions and principles and, if any, related limitations and obstacles” (CRC/C/118, p. 5).

The Committee can request States Parties to provide further information “relevant to the implementation of the Convention” (article 44(4)). The Committee has indicated that it will, if necessary, take urgent action to seek to prevent serious violations of the Convention. The Committee sees its “urgent action procedure” as part of the reporting process under article 44, and it may request additional information from a State Party on a particular situation or issue and also propose a visit to the State. If urgent actions arise that are relevant to the sphere of competence of another treaty body, the Committee will inform the other body (Report on the second session, September/October 1992, CRC/C/10, paras. 54 to 58; Report on the fourth session, September/October 1993, CRC/C/20, paras. 155 and 156). The Committee has initiated urgent actions in only a small number of cases.

Committee meeting in two chambers:

Following the increase in the number of members of the Committee to 18 (see article 43, page 639), the Committee resolved in January 2004 that from the January 2005 session, for an initial period of two years, it would consider States Parties’ reports in two parallel chambers, each consisting of nine members of the Committee, “taking due account of equitable geographical distribution, thereby increasing the number of States Parties’ reports to be examined from 27 to 48 a year” (Report on the thirty-fourth session, CRC/C/133, p. 5). The purpose of this innovation was to reduce the backlog of unexamined reports. In fact, the Committee met in two chambers only for part of the final session in 2005 and the three sessions in 2006. It continued to adopt its Concluding Observations on each State report in plenary session. The Committee noted that it will consider breaking into two chambers again if a further backlog of reports requiring examination builds up.

Reporting guidelines

The Committee has drafted *General Guidelines regarding the form and contents of Initial Reports* (CRC/C/5) and *General Guidelines regarding the form and contents of Periodic Reports* (CRC/C/58). In 2005 it issued revised Guidelines for periodic reports (CRC/C/58/Rev.1; see Appendix 3, page 699); an annex provides more detail on the type of statistical data required by the Committee. In the Guidelines, the Committee has grouped the provisions of the Convention in

clusters, to assist States Parties in the preparation of their reports (see box for details of clusters).

New core guidelines. Draft “Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific targeted documents” were prepared in June 2005 (Seventeenth meeting of chairpersons of the human rights treaty bodies, HRI/MC/2005/3). The aim, set out in the guidelines, is to:

- “(a) Avoid unnecessary duplication of information already submitted to other treaty bodies;
- (b) Minimize the possibility that reports may be considered inadequate in scope and insufficient in detail to allow the treaty bodies to fulfil their mandates;
- (c) Reduce the need for a committee to request supplementary information before considering a report;
- (d) Enable a consistent approach by all committees in considering the reports presented to them; and
- (e) Help each committee to consider the situation regarding human rights in every State Party on an equal basis.” (HRI/MC/2005/3, para. 4, p. 5)

Each State report will consist of two complementary documents – an up-to-date common core document and a targeted treaty-specific document: “The common core document will be submitted to all treaty bodies in conjunction with a targeted report specific to the relevant treaty. Both documents form an integral part of the State’s report: the State Party will not be considered by each committee to have fulfilled its reporting obligations under the relevant treaty until it has submitted both parts of the report containing up-to-date information.” (HRI/MC/2005/3, para. 26, p. 11)

States would be able to submit the two documents separately: “However, States are advised to approach all of their reporting obligations as part of a coordinated process and should try to minimize the delay between the submission of the common core document and the submission of the treaty-specific document to each committee to ensure that the common core document is as up-to-date as possible when the treaty-specific document is considered. A treaty body may request that the common core document be updated if it considers that the information it contains is out of date. Updates may be submitted in the form of an addendum to the existing common core document or a new revised version, depending on the extent of the changes which need to be incorporated.” (HRI/MC/2005/3, para. 29, p. 11)



Guide to the Committee's Guidelines

In its *Guidelines* for initial reports and periodic reports, the Committee on the Rights of the Child has grouped the provisions of the Convention in clusters: “This approach reflects the holistic perspective on children’s rights taken by the Convention: i.e. that they are indivisible and interrelated, and that equal importance should be attached to each and every right recognized therein.” (CRC/C/58/ Rev.1, para. 3)

The following are the clusters:

I General measures of implementation

Article 4: implementation obligations; article 42: making Convention widely known; article 44(6): making reports widely available (in *Guidelines for Periodic Reports*, also covers article 41: respect for existing standards).

II Definition of the child

Article 1.

III General principles

Article 2: non-discrimination; article 3(1): best interests to be a primary consideration; (the *Guidelines for Periodic Reports* also covers article 3(2): the State’s obligation to ensure necessary care and protection; and article 3(3): standards for institutions, services and facilities); article 6: the right to life, survival and development (see also, VI, below); article 12: respect for the views of the child.

IV Civil rights and freedoms

Article 7: right to name, nationality and to know and be cared for by parents; article 8: preservation of child’s identity; article 13: freedom of expression; article 14: freedom of thought, conscience and religion; article 15: freedom of association and peaceful assembly; article 16: protection of privacy; article 17: child’s access to information, and role of mass media; article 37(a): right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment. (The original *Guidelines for Periodic Reports* indicates (para. 48) that these are not the only provisions in the Convention which constitute civil rights and freedoms).

V Family environment and alternative care

Article 5: parental guidance and child’s evolving capacities; article 18(1) and (2): parental responsibilities and State’s assistance; article 9: separation from parents; article 10: family reunification; article 11: illicit transfer and non-return; article 27(4): recovery of maintenance for the child; article 20: children deprived of their family environment; article 21: adoption; article 25: periodic review of placement and treatment; article 19: protection from all forms of violence; article 39: rehabilitation and reintegration of victims of violence (see also VIII below).

VI Basic health and welfare

Article 6: right to life, survival and development (see also, III above); article 18(3): support for working parents; article 23: rights of children with disabilities; article 24: right to health and health services; article 26: right to social security; article 27(1)-(3): right to adequate standard of living.

VII Education, leisure and cultural activities

Article 28: right to education; article 29: aims of education; article 31: right to leisure, play and participation in cultural and artistic activities.

VIII Special protection measures

A Children in situations of emergency

Article 22: refugee children; article 38: children and armed conflict; article 39: rehabilitation of child victims (see also V above).



B Children involved with the system of administration of juvenile justice

Article 40: administration of juvenile justice; article 37(a): prohibition of capital punishment and life imprisonment; article 37(b)-(d): restriction of liberty; article 39: rehabilitation and reintegration of child victims (see also V above).

C Children in situations of exploitation

Article 32: child labour; article 33: drug abuse; article 34: sexual exploitation; article 35: sale, trafficking and abduction; article 36: other forms of exploitation.

D Children belonging to a minority or an indigenous group

Article 30.

Committee's "overview" of the reporting process

The Committee adopted an "overview" of the reporting procedures at its seventh session in October 1994, intended

"... to make the current procedures more transparent and readily accessible to States Parties and others interested in the implementation of the Convention, including United Nations agencies and other competent bodies such as non-governmental organizations.

"The Committee strongly recommends all States Parties to report to it in accordance with the guidelines and in a thorough and timely manner." (Report on the seventh session, September/October 1994, CRC/C/34, Annex V)

The overview describes the process of examination of States Parties' reports, and procedures for follow-up and for overdue reports (see box on page 648 for extracts). An overview of the working methods of the Committee is also available at www.ohchr.org/english/bodies/crc/workingmethods.htm.

Pre-sessional Working Group meetings

As noted under article 43 (pages 639 and 640), at each session the Committee holds a one-week meeting of a "Pre-sessional Working Group" of Committee members to prepare for the examination of States Parties' reports at the following session. The purpose is to enable the Committee to invite specialized agencies, UNICEF and "other competent bodies" to provide expert advice on the implementation of the Convention (see article 45, page 655). "Other competent bodies" includes non-governmental organizations (NGOs) and independent human rights institutions. The meetings of the Pre-sessional Working Group are not open to the public.

At its twenty-second session in 1999 the Committee adopted "Guidelines for the participation of partners (NGOs and individual experts) in the Pre-sessional Working Group

of the Committee on the Rights of the Child". These emphasize that written information should be submitted at least two months in advance. The purpose is to provide the Committee "with a comprehensive picture and expertise as to how the Convention is being implemented in a particular country". Based on the written information, the Committee issues a written invitation to selected NGOs to participate in the Pre-sessional Working Group.

In May 1999 the Committee decided to reintroduce the system of "country rapporteurs" in which one, or more often two, members of the Committee are designated as rapporteurs for each report to be examined. The rapporteurs' responsibilities are:

- to maintain contact and work closely with the appropriate staff member in the secretariat throughout the process;
- to "lead" the discussion during both the pre-session and the session;
- to finalize the draft List of Issues to be addressed to the State Party after the Pre-sessional Working Group meeting;
- to finalize and ensure the quality of the draft concluding observations and recommendations.

(Report on the twenty-second session, September/October 1999, CRC/C/90, para. 318)

The outcome of the Pre-sessional Working Group is a "List of Issues" to be raised with the States Parties whose reports are to be examined at the next session. The List of Issues is now in four parts: part I is a request for specific additional and updated information to be submitted by the State in writing before the examination; part II asks for copies of the text of the Convention in all official languages of the State Party and in other languages or dialects, including any simplified (child-friendly) versions; part III asks for a brief update on new legislation, institutions,



programmes and policies; part IV is a “preliminary list” of major issues which the Committee intends to take up during the dialogue with the

State Party, not requiring written responses and noting that other issues may be raised in the course of the dialogue.

Committee on the Rights of the Child: “Overview of the Reporting Procedures” – extracts

“B. Examination of States Parties’ reports Work of the Pre-sessional Working Group

(See also Guidelines on Pre-sessional Working Group adopted by the Committee in 1999 on page 650.)

Discussions of a State Party report with government representatives are prepared by a Working Group.

The Working Group normally meets immediately after one session of the Committee to prepare for the next one. All Committee members are invited to the pre-sessional meeting. These meetings are not open to the public and there are no formal records. Any decisions taken by the Working Group are reported to the Committee at its next plenary session.

The principal purpose of the Working Group is to identify in advance the most important issues to be discussed with the representatives of the States. The intent is to give advance notice to the States Parties of the principal issues which might arise in the examination of their reports. The Convention on the Rights of the Child is wide-ranging, comprehensive and complex; the possibility for government representatives to prepare in advance their answers to some of the principal questions is likely to make the discussion more constructive.

The Secretariat prepares country files for the Pre-sessional Working Group, containing information relevant to each of the reports to be examined. For this purpose the Committee invites relevant United Nations bodies and specialized agencies, non-governmental organizations and other competent bodies to submit appropriate documentation to the Secretariat. Some of the information is included in the country analysis documents, other information is placed in files which are available to Committee members during the sessions.

A special emphasis is placed on receiving relevant documentation from bodies and agencies within the United Nations system, such as UNICEF, ILO, WHO, UNHCR, UNESCO, UNDP and the World Bank, as well as from other human rights treaty bodies and mechanisms, and from non-governmental organizations, both domestic and international. Such contributions are also of importance in regard to discussions about technical advice and assistance in the light of article 45(b) of the Convention. Representatives of the United Nations bodies and agencies take part in the meetings of the Working Group and give expert advice. The Working Group may also invite representatives of other competent bodies, including non-governmental organizations, to provide information.

The Working Group draws up a List of Issues which is sent to the respective Government through diplomatic channels. In order to facilitate the efficiency of the dialogue, the Committee requests the State Party to provide the answers to its List of Issues in writing and in advance of the session, in time for them to be translated into the working languages of the Committee.

An invitation to a forthcoming session of the Committee is also sent to the State Party, indicating the date, time and venue for the planned discussion.

Presentation of the report

The State Party report will be discussed in open and public meetings of the Committee, during which both the State representatives and Committee members take the floor. Relevant United Nations bodies and agencies are represented. Summary Records of the meetings are issued and the United Nations Department of Public Information is invited to cover the proceedings for the purpose of their Press Releases. Other journalists are free to attend, as are representatives of non-governmental organizations and any interested individual.



With the factual situation largely clarified in writing, there should be room in the discussions to analyze ‘progress achieved’ and ‘factors and difficulties encountered’ in the implementation of the Convention. As the purpose of the whole process is constructive, sufficient time should be given to discussions about ‘implementation priorities’ and ‘future goals’. For these reasons, the Committee welcomes the representation of the State Party to be a delegation with concrete involvement in strategic decisions relating to the rights of the child. When delegations are headed by someone with governmental responsibility, the discussions are likely to be more fruitful and have more impact on policy-making and implementation activities.

After a brief introduction of the report, the State delegation is asked to provide information on subjects covered by the List of Issues, starting with the first section of the Guidelines, i.e. general measures of implementation. Then the dialogue starts. Committee members may want to ask further questions or make comments on the written or oral answers, and the delegation may respond. The discussion moves step by step through the next group of issues according to the Guidelines.

States Parties which have made reservations to the Convention may be asked about the implications of that position in the light of article 51, paragraph 2, of the Convention, which stipulates that reservations incompatible with the object and purpose of the Convention shall not be permitted. Another point of reference is the recommendation by the 1993 World Conference on Human Rights that reservations should be formulated as precisely and narrowly as possible and that States should regularly review any reservations with a view to withdrawing them.

Towards the end of the discussion, Committee members summarize their observations on the report and the discussion itself and may also make suggestions and recommendations. Lastly, the State delegation is invited to make a final statement. Afterwards, the Committee will, in a closed meeting, agree on written Concluding Observations which include suggestions and recommendations. If it is deemed that the information submitted is insufficient, or that there is a need to clarify a number of issues further, and it is agreed that the discussion about the report should continue at a later session, the observations will be preliminary and the State Party will be informed accordingly.

The Concluding Observations usually contain the following aspects: introduction; positive aspects (including progress achieved); factors and difficulties impeding the implementation; principal subjects for concern; suggestions and recommendations addressed to the State Party. The Preliminary Observations usually have a similar structure, but it is made clear that they are not final.

The Committee may in its observations request additional information from the State Party, in accordance with article 44 of the Convention, in order to be able to better assess the situation in the State Party. A deadline for submission of such written material will be determined.

The Concluding Observations are made public on the last day of a Committee session during the adoption of the report, of which they form a part. Once adopted, they are made available to the States Parties concerned, and also issued as official documents of the Committee. In accordance with article 44, paragraph 5, of the Convention, the Committee’s reports are submitted to the United Nations General Assembly, through the Economic and Social Council, for its consideration, every two years.

In the spirit of article 44, paragraph 6, it is important that the Concluding Observations are made widely available in the State Party concerned. If it so wishes, the State Party may address any of the observations in the context of any additional information that it provides to the Committee.

C. Procedures for follow-up action

It is assumed that concerns expressed by the Committee in its Concluding Observations will be addressed in a detailed manner by the State Party in its next report. The Committee may mention in its observations some specific issues on which it is particularly interested to receive detailed information. In cases where the Committee has asked for additional information in accordance with article 44, paragraph 4, such information will be on the agenda at a future session.

When the discussion of a State Party report ends with Preliminary Observations by the Committee, the dialogue will continue at a future session. The Preliminary Observations outline the issues to be discussed at the next stage and specify what further information the Committee requests, in advance and in writing.





The Committee may, in accordance with article 45(b), transmit to relevant agencies and bodies, including the Centre for Human Rights, any reports from States Parties containing a request or indicating a need for technical advice or assistance, along with the Committee's observations and suggestions. This refers to needs both in relation to the reporting process and to implementation programmes.

States can request support from the Programme of Advisory Services and Technical Assistance of the Centre for Human Rights. Such requests could concern reviews required for ratification or accession and preparation of the report, as well as training seminars and other activities to make the principles and provisions of the Convention known and incorporated into national legislation and action plans.

The Concluding Observations of the Committee are disseminated to all relevant United Nations bodies and agencies, as well as other competent bodies, and might serve as a basis for discussions on international cooperation. The Committee may also, in its observations, make particular reference to the need for and possibilities of such cooperation.

D. Procedure in relation to overdue reports

The Convention makes reporting in time an obligation in itself. The Committee emphasizes the importance of timely reports.

Records are kept on the submission of reports, specifying which ones are overdue. The Committee issues regular reminders to States.

With such communications, information is also given about the possibility for States to request technical assistance and advisory services from the United Nations Centre for Human Rights.

In a case of persistent non-reporting by a State Party, the Committee may decide to consider the situation in the country in the absence of a report, but on the basis of all available information. The State Party will be notified about such a decision in advance of the event."

(Committee on the Rights of the Child, Report on the seventh session, September/October 1994, CRC/C/34, pp. 70 et seq.)

Guidelines for the participation of partners (NGOs and individual experts) in the Pre-sessional Working Group of the Committee on the Rights of the Child

"1. Under article 45(a) of the Convention, the Committee on the Rights of the Child may invite specialized agencies, UNICEF and other competent bodies to provide expert advice on the implementation of the Convention. The term 'other competent bodies' includes non-governmental organizations (NGOs). This Convention is the only international human rights treaty that expressly gives NGOs a role in monitoring its implementation. The Committee has systematically and strongly encouraged NGOs to submit reports, documentation or other information in order to provide it with a comprehensive picture and expertise as to how the Convention is being implemented in a particular country. The Committee warmly welcomes written information from international, regional, national and local organizations. Information may be submitted by individual NGOs or national coalitions or committees of NGOs.

2. In order to rationalize its work, written information provided by national, regional and international NGOs as well as individual experts should be submitted to the secretariat of the Committee on the Rights of the Child at least two months prior to the beginning of the Pre-sessional Working Group concerned. Twenty copies of each document should be provided to the secretariat. NGOs are invited to indicate clearly whether they wish the Committee to keep their information or its source confidential.

3. Requests of national, regional and international NGOs to participate in the Pre-sessional Working Group should be submitted to the Committee through its secretariat at least two months prior to the beginning of the Pre-sessional Working Group concerned.

4. Based on the written information submitted, the Committee will issue a written invitation to selected NGOs to participate in the Pre-sessional Working Group. The Committee will only invite NGOs whose information is particularly relevant to its consideration of the State Party's report. Priority will be given to partners who have submitted information within the requested time-frame, who are working in the State Party and who can provide first-hand information that is complementary to information already available to the Committee. In exceptional cases, the Committee reserves the right to limit the number of partners invited.

5. The Pre-sessional Working Group of the Committee provides a unique opportunity for dialogue with partners, including NGOs, regarding implementation of the Convention on the Rights of the Child by States Parties. Therefore, the Committee strongly recommends that its partners limit their introductory remarks to a maximum of 15 minutes for NGOs coming from in-country and five minutes for others so that the members of the Committee can then engage in a constructive dialogue with all participants. Introductory remarks should be limited to highlights of written submissions.

The Pre-sessional Working Group is a meeting closed to the public, so no observers will be allowed.”

(Committee on the Rights of the Child, Report on the twenty-second session, September/October 1999, CRC/C/90, Annex VIII, p. 111)



Examination of States Parties' reports

As noted under article 43 (page 639), the Committee meets for three sessions a year, in Geneva, Switzerland. The Committee normally devotes two 3-hour periods over one day to the public examination of each initial or periodic report. At the end of each session, the Committee issues Concluding Observations, summarizing its comments and recommendations.

Follow-up meetings

In its early years, the Committee on the Rights of the Child held informal regional meetings – for example for Latin America in 1992 and the South-East Asian region in Bangkok in 1993, organized by UNICEF with support and assistance from the Office of the High Commissioner for Human Rights and other United Nations agencies and bodies. Since 2003, the Office of the High Commissioner for Human Rights, in association with UNICEF and international NGOs, has organized regional and sub-regional workshops concerning implementation of the Concluding Observations of the Committee (see www.ohchr.org/english/bodies/crc/follow-up.htm).

Optional Protocols

At its thirty-ninth session, May/June 2005, the Committee issued a decision on consideration of reports under the two Optional Protocols to

the Convention. This welcomed the fact that more than half the Member States of the United Nations have ratified the Protocols. It adopted detailed rules for examination of Initial Reports on the Optional Protocols.

“1. Reports received approximately at the same time as a regular periodic report on the implementation of the Convention on the Rights of the Child will be considered at the session at which this regular periodic report will be examined. Additional separate time will be scheduled for this examination if the State is a party to both Optional Protocols and has submitted approximately at the same time both initial reports.

2. States Parties to both Optional Protocols are encouraged, whenever possible, to submit their initial reports at the same time and preferably not later than the ultimate date at which the initial report is due for the Optional Protocol ratified first. The examination of the two initial reports will be scheduled for a regular session of the Committee.

3. In case the rules mentioned before do not apply, the Committee will apply the following ones:

a) if the State is only a party to the Optional Protocol on the involvement of children in armed conflicts, the initial report to this instrument will be considered at a regular session of the

Committee if the State Party concerned is facing or has recently faced serious difficulties in respecting and implementing the provisions enshrined in the Optional Protocol. For other States Parties, the Committee will offer them a choice of an examination in writing (technical review) or one at a regular session of the Committee which include a dialogue with representatives of the concerned State Party;

b) if the State is only a party to the Optional Protocol on the sale of children, child prostitution and child pornography, the initial report on this instrument will be examined by the Committee at one of its regular sessions.

4. Initial reports submitted under both Optional Protocols will also be included in the agenda of the Committee's Pre-session Working Group meetings." (Report on the thirty-ninth session, May/June 2005, CRC/C/150, pp. 4 and 5. For further details of reporting arrangements under the two Optional Protocols, see pages 659 and 669.)

Reports of the Committee

Under article 44(5), the Committee is required to submit reports on its activities to the United Nations General Assembly, through the Economic and Social Council, every two years. The Committee adopts a report after each of its sessions. For details of documentation of the Committee's activities, see page 641.

Making reports under the Convention widely available: article 44(6)

The Committee on the Rights of the Child in its Concluding Observations has invariably urged each State Party to ensure wide availability of Initial Reports and subsequent reports, any additional information submitted to the Committee, the Summary Records of discussions with the Committee and the Committee's Concluding Observations. Paragraph 6 of article 44 requires States Parties to "make their reports widely available to the public in their own countries". The Committee has urged States Parties to ensure translation into appropriate languages and to ensure that reports are the subject of parliamentary debate and consideration by non-governmental organizations.

It provides guidance in its General Comment No. 5 on "General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)":

"If reporting under the Convention is to play the important part it should in the process of implementation at the national level, it needs to be known about by adults and children throughout the State Party. The reporting process provides a unique form of international accountability for how States treat children and their rights. But unless



The NGO Group for the Convention on the Rights of the Child

The NGO Group for the Convention on the Rights of the Child promotes the involvement of non-governmental organizations in the reporting process to the Committee on the Rights of the Child. It is a coalition of more than 60 non-governmental organizations which work together to facilitate the promotion, implementation and monitoring of the Convention on the Rights of the Child. The NGO Group meets regularly in Geneva to coordinate its action and develop joint strategies. There is a Task Force to support the development of NGO children's rights coalitions at national level. The NGO Group has produced a resource guide outlining the reporting process, *A Guide for Non-governmental Organizations Reporting to the Committee on the Rights of the Child (revised 2006)*. It is intended to assist NGOs in understanding and using the process to further the implementation of the Convention at national level. The NGO Group can be contacted at:

NGO Group for the Convention on the Rights of the Child

1, rue de Varembe, 1202 Geneva, Switzerland
Phone (41) 22 740 4730; fax (41) 22 740 1145
e-mail: ngocrc-lup@bluewin.ch

NGO reports

Reports submitted to the Committee by NGOs for consideration by the Pre-session Working Group are available on-line at www.crin.org unless NGOs have indicated they are confidential.

reports are disseminated and constructively debated at the national level, the process is unlikely to have substantial impact on children's lives.

"The Convention explicitly requires States to make their reports widely available to the public; this should be done when they are submitted to the Committee. Reports should be made genuinely accessible, for example through translation into all languages, into appropriate forms for children and for people with disabilities and so on. The Internet may greatly aid dissemination, and Governments and parliaments are strongly urged to place such reports on their web sites.

"The Committee urges States to make all the other documentation of the examination of their reports under the Convention widely available to promote constructive debate and inform the process of implementation at all levels. In particular, the Committee's Concluding Observations should be disseminated to the public including children and should be the subject of detailed debate in parliament. Independent human rights institutions and NGOs can play a crucial role in helping to ensure widespread debate. The Summary Records of the examination of government representatives by the Committee aid understanding of the process and of the

Committee's requirements and should also be made available and discussed." (Committee on the Rights of the Child, General Comment No. 5, 2003, CRC/GC/2003/5, paras. 71 to 73)

So, for example, it recommended to Tanzania, following examination of its Second Report:

"The Committee recommends that the State Party take all appropriate measures to ensure full implementation of the present recommendations, inter alia, by transmitting them to the members of the Council of Ministers or the Cabinet or a similar body, the Parliament, and to provincial or state governments and parliaments, when applicable, for appropriate consideration and further action.

"The Committee further recommends that the second periodic report and written replies submitted by the State Party, and related recommendations (Concluding Observations) it adopted, be made widely available in the languages of the country, including (but not exclusively) through Internet, to the public at large, civil society organizations, youth groups, professional groups, and children, in order to generate debate and awareness of the Convention, its implementation and monitoring." (United Republic of Tanzania CRC/CO/2, paras. 72 and 73)



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

Implementation Checklist



• Article 44(6)

Has the State made widely available

- its Initial Report, and any Periodic Reports?
- any additional information submitted to the Committee on the Rights of the Child?
- the Summary Records of discussions of the Initial and Periodic Reports?
- the Committee's Concluding Observations on the Initial Report and Periodic Reports?

Have these reports

- been translated and disseminated in national, local, minority or indigenous languages?
- been debated in Parliament?
- been the subject of discussion and debate with appropriate non-governmental organizations?

Cooperation with United Nations agencies and other bodies

article

45



Text of Article 45

In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

Article 45 sets out arrangements intended to foster effective implementation of the Convention and to encourage international cooperation. It outlines the role for specialized agencies, UNICEF and other United Nations organs; they are entitled to be represented when implementation of aspects of the Convention which come within their mandate are being considered. The Committee can invite these bodies, and “other competent bodies” (interpreted as including appropriate non-governmental organizations) to provide expert advice and to submit reports (article 45(a); a brief guide to the United Nations system is given in Appendix 1, page 680). For details of the involvement of these bodies in the reporting process under the Convention, see article 44, page 643.

Article 45(b) requires the Committee to submit to specialized agencies, UNICEF and “other competent bodies” any reports from States Parties that include a request, or indicate a need, for technical advice or assistance. At its third session the Committee decided that, when appropriate, it would indicate a possible need for technical assistance in its Concluding Observations on States Parties’ reports. Where the need for a specific programme of technical advice or assistance is identified, the Committee indicated it would encourage a meeting between the governmental delegation from the State Party and the relevant United Nations or other competent body (Report on the third session, January 1993, CRC/C/16, paras. 139 to 145).

Article 45(c) enables the Committee to recommend that the General Assembly requests the Secretary-General to undertake, on behalf of the Assembly, studies on specific issues relating to the rights of the child. Proposals from the Committee have led to two major studies. In its third session, the Committee recommended a study on children and armed conflict. This led to the comprehensive study on the *Impact of Armed Conflict on Children*, led by Ms Graça Machel (see article 38, page 579). Following its two Days of General Discussion on “Violence against children”, in 2000 and 2001, the Committee proposed a comprehensive study on this issue. The report of this study, led by Professor Paulo Sérgio Pinheiro, was submitted to the General Assembly in October 2006 (see article 19, pages 250 and 251).

Article 45(d) entitles the Committee to make suggestions and general recommendations, to be transmitted to any States Parties concerned and reported to the General Assembly, along with any comments from States Parties.

The Committee noted in the report of its second session that it could play the role of catalyst in developing the agenda for research and study on the rights of the child at the international level (Report on the second session, September/October 1992, CRC/C/10, para. 60). Article 4 of the Convention stresses the importance of international cooperation in implementing the Convention, and there are specific references to international cooperation in articles 17(b), 23(4), 24(4) and 28(3). ■



Miscellaneous provisions concerning the Convention



(For full text of these articles, see Appendix 2, pages 690 and 691)

Signature, ratification, accession, coming into force

These articles cover arrangements for signature, ratification and accession to the Convention, and for its coming into force. The Convention comes into force in a State on the thirtieth day following deposit of the State's instrument of ratification or accession. Once in force, the State acquires obligations under international law to respect and ensure the rights contained in the Convention.



Amendments to the Convention

Any State Party may propose an amendment to the Convention, which is filed with the Secretary-General, who sends it to States Parties. If, within four months, at least a third of the States Parties favour a conference to consider and vote on the proposal, the Secretary-General convenes a conference. Any amendment adopted by a majority of States Parties present and voting at the conference is submitted to the General Assembly for approval. Once approved by the General Assembly and accepted by a two-thirds majority of States Parties, the amendment enters into force. It becomes binding on those States Parties which have accepted it. An amendment to increase the number of members of the Committee on the Rights of the Child from 10 to 18 was approved by the General Assembly in its resolution 50/155 of 21 December 1995 and came into force in November 2002.



Reservations

Reservations made by States Parties at the time of ratification or accession are deposited with the Secretary-General, and circulated to all States. Paragraph 2 of article 51 emphasizes that: "A reservation incompatible with the object and purpose of the present Convention shall not be permitted." Reservations can be withdrawn at any time by notification to the Secretary-General, who then informs other States.

Article 2 of the Vienna Convention on the Law of Treaties defines "reservation" as a "unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or



acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State”.

Some States make “declarations”, which are intended simply to clarify their interpretation of a particular phrase, but if the declaration appears to “exclude or to modify the legal effect of certain provisions” of the Convention, it will be treated as a reservation. In its *Guidelines for Periodic Reports (Revised 2005)*, the Committee on the Rights of the Child notes: “States Parties that have entered reservations to the Convention should indicate whether they consider it necessary to maintain them. They should also indicate whether they have plans to limit the effects of reservations and ultimately to withdraw them, and, whenever possible, specify the timetable for doing so.” (CRC/C/58/Rev.1, 29 November 2005, para. 10)

Denouncing the Convention



A State Party can denounce the Convention at any time by written notification to the Secretary-General; denunciation becomes effective one year later.

Depositary of the Convention



The Secretary-General is designated as the depositary of the Convention.

Official languages



The original text of the Convention in Arabic, Chinese, English, French, Russian and Spanish – all to be regarded as equally authentic – are deposited with the Secretary-General.

Optional Protocol on the involvement of children in armed conflict



(For full text of Optional Protocol, see page 692 and for Reporting Guidelines, see page 704.)

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict requires ratifying States to ensure that nobody under the age of 18 is recruited compulsorily (conscripted) into their armed forces and to “take all feasible measures” to ensure that under-18-year-old members of their armed forces do not take a direct part in hostilities. Also, States must take all feasible measures to prevent recruit-

ment and use in hostilities of children under 18 years by armed groups.

Any State that ratifies the Optional Protocol must raise “in years” the minimum age for voluntary recruitment, set at 15 in the Convention. Each State must make a binding declaration establishing a minimum age for voluntary recruitment and describing safeguards adopted to ensure that such recruitment “is not forced or coerced”. ■



Background

The Optional Protocol was adopted by the United Nations General Assembly resolution in 2000 and entered into force in 2002. By July 2007, over one hundred countries had ratified or acceded to the Optional Protocol.

During the drafting of the Convention on the Rights of the Child there was concern that article 38 was not consistent with the protection of children offered by the rest of the Convention (for discussion, see article 38, page 574). The proposal for an optional protocol to the Convention arose from the first Day of General Discussion held by the Committee on the Rights of the Child, on “Children in armed conflict” (5 October 1992).

At its third session in January 1993, the Committee agreed to prepare a preliminary draft text of an optional protocol (see Report on the third session, January 1993, CRC/C/16, Annex VII). At its sixth session, in 1994, it welcomed *“... the decision of the Commission on Human Rights to establish an open-ended working group to elaborate as a matter of priority a draft optional protocol to the Convention on the Rights of the Child and to use as a basis for its discussions the preliminary draft submitted by the Committee on the Rights of the Child.”* (Report on the sixth (special) session, April 1994, CRC/C/29, p. 4)

The Working Group met between 1994 and 2000. Many States Parties to the Convention and the Committee on the Rights of the Child wished to see the protocol provide protection of all under-18-year-olds from any involvement in hostilities – direct or indirect – and any recruitment into armed forces, whether compulsory or voluntary. It proved impossible to reach consensus on this. The resulting text is a compromise which does improve the protection offered by article 38 of the Convention, but falls short of the clear standards sought by the Committee on the Rights of the Child, many States Parties and many non-governmental organizations concerned with children’s rights. (The reports of the Working Group form the *travaux préparatoires* of the Optional Protocol. See, for example, E/CN.4/2000/74.)

Standards of the Convention

Under article 38, States Parties are required to:

- respect and ensure respect for rules of international humanitarian law applicable to them in armed conflicts (principally the four Geneva Conventions and three Additional Protocols);

- take all feasible measures to ensure that under-15-year-olds do not take a direct part in hostilities;
- refrain from recruiting under-15-year-olds into armed forces;
- give priority to the oldest in recruiting any 15- to 18-year-olds;
- take all feasible measures to ensure protection and care of children affected by an armed conflict.

The Committee on the Rights of the Child has emphasized, in the report of its General Day of Discussion on “Children in armed conflict” (see article 38, page 580) and in submissions to the Working Group drafting the optional protocol, that the effects of armed conflict on children should be considered in the framework of all the articles of the Convention; that States should take measures to ensure the realization of the rights of all children in their jurisdiction in times of armed conflict; and that the principles of the Convention are not subject to derogation in times of armed conflict. It has stressed that it believes, in the light of the definition of the child and the principle of the best interests of the child, that no child under the age of 18 should be allowed to be involved in hostilities, either directly or indirectly, and that no child under 18 should be recruited into armed forces, either through conscription or voluntary enlistment.

Provisions of the Optional Protocol

It is clear from the Preamble and other provisions that implementation of the Optional Protocol must be conducted in the light of the Convention on the Rights of the Child.

Recruitment. Article 1 requires States Parties to the Optional Protocol to “take all feasible measures” to ensure that members of their armed forces who have not attained the age of 18 do not take a direct part in hostilities.

During drafting there was pressure to remove the word “direct”, and the Committee’s *Guidelines* asks States to provide their legal definition of the word. The United States of America included its definition in the mandatory declaration accompanying ratification:

“... the phrase “direct part in hostilities” (i) means immediate and actual action on the battlefield likely to cause harm to the enemy because there is a direct causal relationship between the activity engaged in and the harm done to the enemy;



and (ii) does not mean indirect participation in hostilities, such as gathering and transmitting military information, transporting weapons, munitions, or other supplies, or forward deployment.” The Declaration also noted that any decision about assignment of military personnel “shall only be judged on the basis of all the relevant circumstances and on the basis of that person’s assessment of the information reasonably available to the person at the time the person planned, authorized, or executed the action under review, and shall not be judged on the basis of information that comes to light after the action under review was taken.” (United Nations treaties, chapter IV, Human Rights, 11.b.)

Relevant to this last point, the Committee has recommended in its Concluding Observations that States ensure that their law stipulates explicitly that

“... military personnel should not undertake any act that violates the rights enshrined in the Optional Protocol regardless of any military order to that effect.” (Kazakhstan CRC/C/OPAC/KAZ/CO/1, para. 7)

Article 2 of the Optional Protocol requires States to ensure that under-18-year-olds are not compulsorily recruited into their armed forces. Article 3 requires States to raise the minimum age for voluntary recruitment into their national armed forces “in years” from that set out in article 38 of the Convention (that is to say, States should refrain from recruiting any person who has not attained the age of 15, and in recruiting 15- to 18-year-olds, to endeavour to give priority to the oldest). Thus the requirement to raise “in years” means that 16 is the minimum recruitment age for any ratifying State.

When a State ratifies or accedes to the Optional Protocol, it must deposit a binding declaration stating the age at which it permits voluntary recruitment and describing safeguards adopted “to ensure that such recruitment is not forced or coerced,” that the child and parents give informed consent, and that adequate proof of age is provided. A State can strengthen its declaration at any time by notifying the Secretary-General. The box on page 662 sets out the States that have ratified or acceded to the Optional Protocol (as at July 2007) and lists the minimum age for recruitment (compulsory or otherwise), as set out in the State’s declaration.

Article 3 of the Optional Protocol also requires States to take account of the other principles contained in article 38 of the Convention and to recognize “that under the Convention persons under 18 are entitled to special protection”. This

last requirement emphasizes that the Optional Protocol needs to be interpreted in the light of the Convention and in particular the general principles identified by the Committee on the Rights of the Child of non-discrimination (article 2), best interests of the child (article 3), right to life and maximum survival and development (article 6) and respect for children’s views (article 12).

The safeguards for non-coercive recruitment must ensure as a minimum that:

- recruitment is genuinely voluntary;
- recruitment is done with the informed consent of parents or legal guardians;
- child and parents are fully informed of the duties involved in such military service;
- reliable proof of age is provided prior to acceptance into national military service.

In the small number of countries that had their Initial Reports on the Optional Protocol examined by the Committee by the end of 2006, the issue of minimum age for recruitment had priority attention. Many of the declarations assert that 18 is the State’s minimum age for either recruitment or conscription, thereby apparently conforming to the Committee’s recommendations and the goal of a wide coalition of NGOs campaigning on this issue.

However, even the small number of Concluding Observations made by the Committee reveal difficulties with States who appear to comply with the “straight 18” position (no recruitment, no conscription and no participation in hostilities by under-18s). For example, it raised the following concern with New Zealand:

“The Committee welcomes the amendment to the Defence Act (1990) which prohibits anyone under 18 from being liable for active service. However, it is concerned that the Defence Force Orders for Administration (15 February 2002) refer only to active service outside New Zealand and therefore implicitly allows active service inside New Zealand by soldiers below the age of 18.” (New Zealand CRC/C/OPAC/CO/1, para. 4)

As regards countries that have set lower minimum age limits for recruitment, the Committee naturally recommends these be raised, as well as scrutinizing the safeguards against any form of coercion. For example, its Concluding Observations on Bangladesh’s Initial Report (which declared a recruitment age of 16) included:

*“The Committee is concerned that:
(a) Considering the serious constraints of the birth registration system identified by the*



States that have ratified or acceded to the Optional Protocol (by July 2007):

Declaration as to minimum age for recruitment

Afghanistan	22	Liechtenstein	no armed forces
Andorra	no armed forces	Lithuania	18
Argentina	18	Luxembourg	17
Armenia	18	Madagascar	18
Australia	17	Maldives	18
Austria	17	Mali	18
Azerbaijan	17	Malta	17
Bahrain	18	Mexico	-
Bangladesh	16	Moldova	18
Belarus	18	Monaco	21
Belgium	18	Mongolia	18
Belize	16	Montenegro	18
Benin	18	Morocco	18
Bolivia	17	Mozambique	18
Bosnia and Herzegovina	18	Namibia	18
Botswana	18	Nepal	18
Brazil	16	New Zealand	17
Bulgaria	18	Nicaragua	18
Burkina Faso	18	Norway	18
Cambodia	18	Oman	18
Canada	16	Panama	16
Cape Verde	17	Paraguay	18
Chad	18	Peru	18
Chile	16	Philippines	18
Colombia	18	Poland	17
Costa Rica	no armed forces	Portugal	18
Croatia	18	Qatar	18
Cuba	17	Republic of Korea	18
Czech Republic	18	Romania	18
DR of the Congo	18	Rwanda	18
Denmark	18	Senegal	20
Dominica	18	Serbia	18
Ecuador	18	Sierra Leone	18
Egypt	16	Slovakia	18
El Salvador	16	Slovenia	18
Eritrea	18	Spain	18
Finland	18	Sri Lanka	18
France	17	Sudan	18
Germany	17	Sweden	18
Greece	18	Switzerland	18
Guatemala	-	Syrian Arab Republic	18
Holy See	18	Tajikistan	18
Honduras	18	Thailand	18
Iceland	no armed forces	TFYR Macedonia	18
India	16	Timor-Leste	18
Ireland	17	Togo	18
Israel	17	Tunisia	18
Italy	17	Turkey	19
Jamaica	18	Turkmenistan	17
Japan	18	Uganda	19
Jordan	16	Ukraine	19
Kazakhstan	19	United Kingdom	16
Kenya	18	United Republic of Tanzania	18
Kuwait	18	United States of America	17
Kyrgyzstan	18	Uruguay	18
Lao PDR	18	Venezuela	18
Latvia	18	Viet Nam	18
Lesotho	18	Yemen	18
Libyan Arab Jamahiriya	18		



Committee on the Rights of the Child during the consideration of the second periodic report in 2003, it might be very difficult in many cases to determine the real age of the recruits;

(b) The consent of parents or legal guardians is not mandatory for the recruitment of under-18s, except for recruitment in the Air Force;

(c) There are no measures to ensure that recruitment of under-18s is genuinely voluntary and well informed;

(d) There are a reported high number of children under 18 who enrol in armed forces.

"The Committee, while reminding the State Party of the need to register all children at birth... recommends that the State Party develop and strengthen measures effectively to guarantee:

(a) *That no child under 16 years be enrolled in the army or in the police forces, by establishing and systematically implementing safeguards to verify the age of volunteers, based on objective elements such as birth certificate, school diplomas and in the absence of documents, medical examination to determine the exact age of the child;*

(b) *That recruitment of children under 18 years is genuinely voluntary, based on an informed decision and only occurs with prior consent of the parents or legal guardians;*

(c) *That as few children as possible under 18 are enlisted."* (Bangladesh CRC/C/OPAC/BGD/CO/1, paras. 15 and 16)

Military schools. The only exception to the requirement to raise the recruitment age is that it does not apply to schools "operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child". Article 28 requires school discipline to be administered in a manner consistent with the child's human dignity and in conformity with the Convention and article 29 sets out in detail aims for education (see pages 428 and 437).

A number of the States' mandatory declarations point out that, although recruitment to the armed forces is set at 18, children are enrolled in military schools at an earlier age.

In Concluding Observations on reports under the Optional Protocol the Committee has raised concerns about the running and curriculum of these schools. For example:

"The Committee is concerned about the possible military training that children in unregistered 'madrassas', also known as 'qaumi madrassas', undergo from a very young age." (Bangladesh CRC/C/OPAC/BGD/CO/1, para. 17)

"In the light of the information that students of military schools do receive, in addition to

the regular school curriculum, specific training on military issues, including special physical training and arms instruction, the Committee is concerned at the lack of independent mechanisms to deal with possible complaints by the students.

"The Committee recommends that children attending military schools have adequate access to independent complaints and investigation mechanisms." (Kazakhstan CRC/C/OPAC/KAZ/CO/1, paras. 14 and 15)

In addition, the Committee expresses concern where it appears that these schools may apply a form of coercion regarding recruitment, as for example with Italy:

"The Committee notes the existence of three military schools, in Milan, Naples and Venice, combining secondary education with military training for students between 15 and 17 years old.

The Committee is concerned that when students reach the age of 16 years, they must apply for a voluntary recruitment of three years to be allowed to complete their studies, failing which they will be dismissed from military school." (Italy CRC/C/OPAC/ITA/CO/1, para. 15)

Some armies do not maintain military schools, as such, but rather support junior military forces in ordinary schools. The Committee, for example, wanted to know more about New Zealand's 'cadet forces':

"With regard to incentives for recruitment, and in the light of the fact that a significant proportion of new recruits in the armed forces come from the cadet forces, the Committee requests the State Party, in its next report, to include information on the cadet forces, in particular on how the activities of the cadet forces fit with the aims of education, as recognized in article 29 of the Convention and in General Comment No. 1 of the Committee, and on recruitment activities undertaken by the armed forces within the cadet forces." (New Zealand CRC/C/OPAC/NZL/1, para. 8)

Criminalizing the use of child soldiers

Article 4 addresses armed groups that are distinct from the armed forces of the State: they should not "under any circumstances, recruit or use in hostilities persons under the age of 18". States must take all feasible measures to prevent this, including legal measures to prohibit and criminalize such practices (the article notes that its application does not affect the legal status of any party to an armed conflict).

The fact that the ratifying State does not maintain an army does not preclude the need for these laws, as the Committee pointed out to Andorra:





“... The absence of armed forces does not however exclude the possibility of individuals or groups undertaking efforts to recruit children for foreign armed forces or groups and the Committee is concerned that the recruitment of children is not explicitly mentioned as a crime in the State Party’s criminal code.” (Andorra CRC/C/OPAC/AND/CO/1, para. 6)

And the Committee identifies as a loophole the fact that the legal measures of a number of States do not provide for extraterritorial offences, either by its citizens recruiting children abroad or because children of the State have been recruited abroad. For example, it raised with Kazakhstan and Viet Nam:

“The Committee notes that article 162 of the Criminal Code makes the recruitment and use of mercenaries a crime and that article 7 of the Criminal Code provides for certain extraterritorial jurisdiction. However, the Committee is concerned that there is no specific provision criminalizing the recruitment of children below the age of 18, nor a specific provision providing extraterritorial jurisdiction in case of recruitment of a Kazakh child outside the country or recruitment of children by a Kazakh citizen outside Kazakhstan.” (Kazakhstan CRC/C/OPAC/KAZ/CO/1, para. 6)

“The Committee notes that there are provisions in the State Party’s Criminal Code which would permit Vietnamese courts to exercise jurisdiction over crimes committed outside the territory of Viet Nam when the conduct would violate national law in situations provided for in the international treaties which the State Party has ratified or acceded to. However, it is not clear whether Vietnamese law:

(a) Criminalizes the compulsory recruitment or involving in hostilities of a person under 18 or any other violation of the provisions contained in the Optional Protocol;

(b) Allows for the exercise of the courts’ jurisdiction if these acts were committed outside Viet Nam by or against a Vietnamese citizen.” (Viet Nam CRC/C/OPSC/VNM/CO/1, para. 5)

Article 5, reflecting article 41 of the Convention, notes that nothing in the Optional Protocol shall be construed as precluding provisions in domestic or international law which are “more conducive to the realization of the rights of the child”.

Rehabilitation and prevention

Article 6 provides general implementation duties: States Parties must take “all necessary legal, administrative and other measures” to ensure effective implementation and enforcement. Reflecting article 42 of the Convention, States undertake to

make the principles and provisions of the Optional Protocol “widely known and promoted by appropriate means, to adults and children alike”. The last paragraph of the Preamble to the Optional Protocol notes that States Parties encourage “the participation of the community and in particular children and child victims in the dissemination of information and education programmes concerning the implementation of the Protocol”. The third paragraph of article 6 requires States to take all feasible measures to ensure that persons recruited or used in hostilities contrary to the Optional Protocol are “demobilized or otherwise released from service.” Reflecting article 39 of the Convention, such persons must receive, when necessary, all appropriate assistance for their physical and psychological recovery and social reintegration.

Many rich countries, including those whose laws fully comply with the Optional Protocol and who rarely use their armed forces, are likely to receive a number of refugees from armed conflict, including former child soldiers. The Committee has sometimes expressed frustration with the limited information on the assistance these children are given by the State. For example it put the following request to Finland:

“The Committee invites the State Party to provide information in its next Periodic Report on refugee and migrant children within its jurisdiction who may have been involved in hostilities in their country of origin and on the assistance provided, if any, for their physical and psychological recovery and social reintegration. Furthermore, the State Party is also invited to provide additional information on technical cooperation and financial assistance projects aimed at preventing the involvement of children in armed conflicts as well as assisting the recovery of child victims of armed conflict.” (Finland CRC/C/OPAC/FIN/CO/1, paras. 4 and 5)

The Committee also considers state involvement in the arms trade, and specifically whether arms are sold to countries where child soldiers are used. For example, it commended Switzerland’s code of practice:

“The Committee notes with appreciation that the State Party’s authorization of foreign trade in war material follows certain criteria (Ordonnance du 25 février 1998 sur le matériel de guerre, Etat 12 mars 2002) and pays particular attention to the use of children as soldiers in the receiving country.” (Switzerland CRC/C/OPAC/CHE/CO/1, para. 5)

And it raised concerns about the trade provisions of Belgium, Canada and Bangladesh:

“While noting with appreciation the State Party’s efforts to work towards the prohibition

of light weapons usable by child soldiers at the international level, for example, by banning the trade of war materiel to countries 'where it has been established that child soldiers are aligned with the regular army' (based on the 2003 amendment to the law on small arms trade), the Committee is concerned that this provision applies only to child soldiers under the age of 16. As regards the international trade in small arms and light weapons, the Committee notes that the manufacture and exportation of these weapons occurs within the State Party.

"The Committee recommends that the State Party review its domestic law on small arms trade with a view to abolishing a trade on war materiel with countries where persons who have not attained the age of 18 take a direct part in hostilities as members of their armed forces or armed groups that are distinct from the armed forces of a State. In this respect, the Committee invites the State Party to indicate, in its next report, the number of sales that were halted as a result of the implementation of the amended law on small arms trade." (Belgium CRC/C/OPAC/BEL/CO/1, paras. 20 and 21)

"The Committee, while noting initiatives taken to monitor the trafficking of small arms and light weapons, is concerned by their proliferation in the State Party and by the high proportion of children carrying them.

"The Committee recommends that the State Party take all necessary measures to ensure that children do not have access to small arms and/or light weapons and that those already in possession of weapons be disarmed. It further recommends that measures taken to prevent arms trafficking include a child rights perspective." (Bangladesh CRC/C/OPAC/BGD/CO/1, paras. 20 and 21)

"The Committee recommends that the State Party ensure that its domestic legislation and practice prohibit in any case the trade of small arms and light weapons to countries where persons who have not attained the age of 18 may take a direct part in hostilities as members of their armed forces or armed groups that are distinct from the armed forces of a State. The Committee also invites the State Party to provide specific information on this issue in its next report." (Canada CRC/C/OPAC/CAN/CO/1, paras. 14 and 15)

International cooperation in implementing the Optional Protocol is required by article 7, including through technical cooperation and financial assistance. The remaining articles set out arrangements for reporting and for ratification, accession and denunciation, coming into force

and for amending the Optional Protocol (see full text in Appendix 2, page 692).

Reporting obligations under the Optional Protocol

States Parties to the Optional Protocol must submit to the Committee on the Rights of the Child an Initial Report within two years, "providing comprehensive information on the measures it has taken to implement the provisions of the Optional Protocol, including the measures taken to implement the provisions on participation and recruitment" (article 8).

The Committee adopted reporting guidelines for Initial Reports under the Optional Protocol in October 2001 (for text, see Appendix 3, page 704). Thereafter, States Parties shall include any further information on implementation of the Optional Protocol in the reports they submit every five years to the Committee under the Convention on the Rights of the Child. The Committee may request further information. Article 8 also notes that "Other States Parties to the Protocol shall submit a report every five years". Article 9 notes that the Optional Protocol is open to ratification or accession "by any State"; thus States which are not States Parties to the Convention on the Rights of the Child may become States Parties to the Optional Protocol. (Of the two States yet to ratify the Convention on the Rights of the Child, Somalia has signed but not yet ratified the Optional Protocol; the United States of America has ratified it.)

In its thirty-ninth session, in June 2005, the Committee adopted the following rule:

"... If the State is only a party to the Optional Protocol on the involvement of children in armed conflicts, the Initial Report to this instrument will be considered at a regular session of the Committee if the State Party concerned is facing or has recently faced serious difficulties in respecting and implementing the provisions enshrined in the Optional Protocol. For other States Parties, the Committee will offer them a choice of an examination in writing (technical review) or one at a regular session of the Committee which include a dialogue with representatives of the concerned State Party." (Committee on the Rights of the Child, Report on the thirty-ninth session, May/June 2005, CRC/C/150, pp. 4 and 5)

Of the States examined before the end of 2006, Belgium, Canada and the Czech Republic opted for the technical review, without dialogue with the Committee.



Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to the Optional Protocol, including

- identification and coordination of the responsible departments and agencies at all levels of government (the Optional Protocol is relevant to **departments of defence, foreign affairs, home affairs, education, social welfare**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the Optional Protocol, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

which involves where necessary international cooperation in line with article 7 of the Optional Protocol?

(Such measures may be part of an overall governmental strategy for implementing the Convention and the Optional Protocol).

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of the Optional Protocol widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to the Optional Protocol likely to include training for **all members of armed forces, including peacekeeping forces, social workers, aid workers, psychologists and health workers**)?

• Specific issues in implementing Optional Protocol

- Does the State ensure that under-18s who are members of its armed forces do not take a direct part in hostilities?
- Does the State ensure that under-18s are not compulsorily recruited into its armed forces?
- Has the State raised in years the age for voluntary recruitment into its national armed forces, from that set out in article 38 of the Convention?



How to use the checklist, see page XIX

- Has the State deposited a binding declaration setting out the minimum age for voluntary recruitment and describing safeguards adopted to ensure that such recruitment is not forced or coerced?
- Do these safeguards ensure, as a minimum that
- recruitment is genuinely voluntary;
 - recruitment is done with the informed consent of the child's parents or legal guardians;
 - those involved are fully informed of the duties involved in such military service;
 - those involved provide reliable proof of age prior to acceptance.
- Does the State keep under review the age for voluntary recruitment, with a view to raising it further in years?
 - Does the State take all feasible measures to prevent recruitment or use in hostilities of under-18s by other armed groups?
 - Has the State adopted legal measures to prohibit and criminalize such practices by other armed groups?
 - Has the State sought to establish extraterritorial jurisdiction for these crimes when they are committed by or against a person who is a citizen of or has other links with the State?
 - Does the State ensure that any children in their jurisdiction recruited or used in hostilities in ways contrary to the Optional Protocol are demobilized or otherwise released from service?
 - Does the State ensure that such children receive when necessary all appropriate assistance for their physical and psychological recovery and social reintegration?

Reminder: The **Optional Protocol** should not be considered in isolation from the **Convention on the Rights of the Child**. The **Convention** is indivisible and its articles are interdependent.

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in jurisdiction without discrimination on any ground

Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children

Article 6: right to life and maximum possible survival and development

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



How to use the checklist, *see page XIX*

Closely related articles in the Convention

Articles whose implementation is particularly related to that of the Optional Protocol include:

- Article 19: protection from all forms of violence
- Article 22: refugee children
- Article 28: right to education
- Article 29: aims of education
- Article 34: protection from sexual exploitation
- Article 35: abduction and trafficking
- Article 37: protection from torture, cruel inhuman or degrading treatment or punishment
- Article 38: armed conflict
- Article 39: rehabilitative care for victims of armed conflict



Optional Protocol on the sale of children, child prostitution and child pornography



(For full text of Optional Protocol, see page 695 and for Reporting Guidelines, see page 707.)

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography defines what is meant by these terms and requires ratifying States to take all possible measures to criminalize them as offences and to prosecute offenders domestically; overseas prosecution of nationals is discretionary. It also requires that the children concerned be treated humanely, with a view to their social rehabilitation.

Unlike the Optional Protocol on the involvement of children in armed conflict, the proposal for

an optional protocol on child sexual exploitation was not actively supported by the Committee on the Rights of the Child. It was felt that the issues were already addressed within the Convention, that they should not be seen in isolation but holistically within the broad range of children's human rights, and that energies should rather be put into strengthening the implementation of existing rights than into the creation of new instruments. Nonetheless the desire for more detailed state responsibilities to tackle these forms of child abuse, particularly as regards the prosecution and extradition of "sex tourists", ultimately ensured the Optional Protocol's adoption. ■



Background

Action to tackle commercial sexual exploitation of children started in the 1990s and is described in relation to article 34 (page 513). In that year, the Special Rapporteur on the sale of children, child prostitution and child pornography was appointed to review international and national developments and make detailed recommendations.

In 1992, the Commission on Human Rights adopted Programmes of Action on this subject, making recommendations for greater public awareness and social support for “child victims”, or “survivors”, the term preferred by many NGOs, as well as for legislative reform. Forms of cooperation between law enforcement agencies on cross-border trafficking were encouraged together with the establishment of special intergovernmental task forces to promote measures in alliance with appropriate non-governmental organizations (Commission on Human Rights resolution 1992/74, 5 March 1992). In 1994 the Commission on Human Rights established an open-ended working group to prepare guidelines for a possible protocol on the sale of children and their commercial sexual exploitation. As mentioned above, the proposal for an optional protocol on these issues did not have particularly enthusiastic support from either the Committee or many of the organizations working to prevent the sexual exploitation of children (for example, see Report on the eleventh session, January 1996, CRC/C/50).

The Optional Protocol was adopted by the United Nations General Assembly resolution 54/263 on 25 May 2000. It entered into force on 18 January 2002, three months after the deposit of the tenth instrument of ratification or accession (article 14).

The Optional Protocol contains a number of proposals made at the 1996 First World Congress against Commercial Sexual Exploitation of Children, held in Stockholm (Sweden). This produced a detailed Declaration and Agenda for Action rooted in the Convention that urged States to prepare national agendas with set goals and a time frame for implementation by the year 2000. In particular, the Congress focused on the issue of sex tourism, calling for extraterritorial criminal laws.

The ILO Worst Forms of Child Labour Convention (No.182) was adopted in 1999. The “worst forms of child labour” includes all activities which involve the sale of children, child prostitution and child pornography. Also developed in parallel to the Optional Protocol was the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against

Transnational Organized Crime. This was also adopted by the United Nations General Assembly in 2000. (For full text, see Appendix 4, page 761.)

Ratification and reporting

Since adoption the Optional Protocol has had, by July 2007, over 100 ratifications or accessions (see box). A number of States have entered declarations and reservations. The declarations are mainly legal clarifications, some with the intention to increase the protection of children – for example, not to limit “sale of children” only to the definitions in article 2 and article 3 – or to define civil freedoms or make clear that adoption is not recognized by their State (see page 294 for discussion on this type of reservation). In the view of the Committee, the more serious reservations relate to extradition (see discussion of article 5 below). In addition, Oman and Qatar state that they will only implement those aspects of the Optional Protocol that are compliant with Islamic law. Other States have lodged formal objections to these, on the grounds that such a reservation effectively casts doubts on the commitment of the State to the treaty. The Committee was informed by Qatar that it intended to review this reservation (Qatar CRC/C/OPSC/QAT/CO/1, para. 9).

In 2005 States began to submit their Initial Reports to the Committee and at the end of 2006 the Committee revised its *Guidelines* for reporting because it wished to assist States to have a better understanding of the information needed to assess progress (see page 707). The revised guidelines are longer than the guidelines for reporting on the Convention as a whole. They require States to submit a mass of information on all aspects of the Optional Protocol, some of which is also relevant to implementation of the Convention (for example the information on adoption regulation is also useful for assessing implementation of article 21, the information about asylum-seeking children for assessing article 22, etc.). States that follow these guidelines will achieve a sharp focus on the protection they offer to children whose rights have been violated by sexual and commercial exploitation.

The Committee’s Concluding Observations on reports under the Optional Protocol follow a similar pattern to reports under the Convention, in that the Committee starts with general measures of implementation (coordination and evaluation; national plan of action; dissemination and training; data collection; budget allocation, and independent monitoring). This is followed by an examination of the States’ legal measures to prohibit the sale of children, child pornography and prostitution; the third section is devoted to the protection of the rights and interests of child



States that have ratified or acceded to the Optional Protocol on the sale of children, child prostitution and child pornography (as at July 2007)

Afghanistan	El Salvador	Paraguay
Algeria	Equatorial Guinea	Peru
Andorra	Eritrea	Philippines
Angola	Estonia	Poland
Antigua and Barbuda	France	Portugal
Argentina	Georgia	Qatar
Armenia	Guatemala	Republic of Korea
Australia	Holy See	Romania
Austria	Honduras	Rwanda
Azerbaijan	Iceland	Saint Vincent and the Grenadines
Bahrain	India	Senegal
Bangladesh	Italy	Serbia
Belarus	Japan	Sierra Leone
Belgium	Jordan	Slovakia
Belize	Kazakhstan	Slovenia
Benin	Kuwait	South Africa
Bolivia	Kyrgyzstan	Spain
Bosnia and Herzegovina	Lao PDR	Sri Lanka
Botswana	Latvia	Sudan
Brazil	Lebanon	Sweden
Brunei Darussalam	Lesotho	Switzerland
Bulgaria	Libyan Arab Jamahiriya	Syrian Arab Republic
Burkina Faso	Lithuania	Tajikistan
Cambodia	Madagascar	Thailand
Canada	Maldives	TFYR Macedonia
Cape Verde	Mali	Timor-Leste
Chad	Mauritania	Togo
Chile	Mexico	Tunisia
China	Moldova	Turkey
Colombia	Mongolia	Turkmenistan
Comoros	Montenegro	Uganda
Costa Rica	Morocco	Ukraine
Croatia	Mozambique	United Republic of Tanzania
Cuba	Namibia	United States of America
Cyprus	Nepal	Uruguay
DR Congo	Netherlands	Vanuatu
Denmark	Nicaragua	Venezuela
Dominica	Niger	Viet Nam
Dominican Republic	Norway	Yemen
Ecuador	Oman	
Egypt	Panama	



victims; the fourth to measures to prevent the production and dissemination of materials; the fifth to international cooperation, and the sixth examines the States' measures for training, follow-up and dissemination.

Provisions of the Optional Protocol

Article 1 requires prohibition of the sale of children, child prostitution and child pornography.

Article 2 defines what is meant by these terms. As regards the definition of "pornography", Sweden and other countries lodged declarations that the words "any representation" should be taken only to mean "visual representation" (so, for example, written descriptions of child sex would not be included). Article 3 provides further detail – for example that the sale of children includes such things as transfer of children's organs, their forced labour or improperly inducing parental consent to a child's adoption. One

of the United States of America's reservations was that "transfer of organs for profit" would not include any situation where the child had given lawful consent, which arguably misses the point of this provision. The Optional Protocol requires that all these activities are criminalized (including criminalizing "legal persons", i.e., organizations such as film or publishing companies), whether committed domestically or transnationally, and supported by appropriate penalties and state measures to secure enforcement.

The Committee carefully checks that the laws of reporting States give children full protection, for example expressing concern to Kazakhstan and the Syrian Arab Republic:

"... the Committee is concerned that the national legal framework does not incorporate all elements of articles 2 and 3 of the Protocol: (a) Article 133 of the Criminal Code does not cover sufficiently the sale of children for the purpose of forced labour (art. 3(1)(a)(i)(c) OP); (b) Article 270 of the Criminal Code regarding recruitment for prostitution mentions specific methods of this recruitment but does not make punishable the recruitment of a child for prostitution regardless of the methods used; (c) Article 273 of the Criminal Code does not explicitly prohibit possession of child pornography (art. 3(1)(ii)(c)); (d) Legal persons cannot be liable for crimes under the Optional Protocol; (e) Legal provisions with regard to adoption need strengthening by adherence to international standards and establishment of a central regulating authority." (Kazakhstan CRC/C/OPSC/KAZ/CO/1, para. 15)

"... there are no specific provisions expressly targeting sale of children and child pornography, although these offences would reportedly be covered by other existing provisions; the age limit in the Penal Code is apparently not set at 18 years for all the offences covered by the Optional Protocol." (Syrian Arab Republic CRC/C/OPSC/SYR/CO/1, para. 18(a) and (b))

The Committee was also unhappy about Viet Nam's legal provision on compensation to the victim, not because it was opposed to reparation, but because it appeared to offer a means for the perpetrator to buy a lighter sentence:

"The Committee is concerned that... the Penal Code provides that the author of a crime, including crimes covered by the Optional Protocol, may obtain a reduction of the sentence if he/she makes an offer of compensation which is accepted by the child victims or their families."

"The Committee recommends that the State Party... reconsider... the Penal Code in order to

make a clear distinction between the sanction that can be imposed on the perpetrator and the reparation which can be claimed by the victim..." (Viet Nam CRC/C/OPSC/VNM/CO/1, paras. 10 and 11)

The final paragraph of article 3 requires States to take measures to ensure compliance with international adoption instruments. The main multilateral instrument is the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, but of course this does not help in countries where the Hague Convention has not been ratified. However the definition of "sale of children" in article 2 should ensure that any aspect of adoption undertaken for profit is criminalized. The Committee, for example, raised concerns about adoption profiteering with Viet Nam, notwithstanding the fact that it had not yet ratified the Hague Convention:

"The Committee... is concerned about a legal vacuum in the legislation in the area of adoption which would impede the prosecution and punishment of persons acting as intermediary for the adoption of a child in violation of applicable international legal instruments, in accordance with article 3(1)(a)(ii) of the Optional Protocol."

"The Committee recommends that the State Party take all appropriate measures, including amendments in its legislation, to ensure that all persons involved in the adoption of a child, including the intermediary, act in conformity with applicable international legal instruments and that, especially in intercountry adoption, the placement does not result in improper financial gain for those involved in it. The Committee further recommends that the State Party complete the process to become a party to the 1993 Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption." (Viet Nam CRC/C/OPSC/VNM/CO/1, paras. 25 and 26)

Article 4 is concerned with the extent of jurisdiction over these criminal offences. The State must criminalize such offences that are committed within its own territory and must also prosecute if it declines to extradite a foreign national alleged to have committed such an offence. It may also extend jurisdiction to cover offences which are either committed abroad by one of its citizens (or habitual residents), or committed upon one of its citizens when abroad. The Committee is concerned when States only take action when there is "double criminality" (so that the offence is recognized by both countries) as, for example, it found in Iceland and Qatar:

"The Committee notes with concern the principle of 'double criminality' in article 5 of the General Penal Code, which requires that a



person who has committed a serious or lesser offence abroad can be punished in Iceland only if the act is punishable under the law of the country in which it was committed. The Committee is concerned that this requirement limits the possibility of the prosecution of offences outlined in articles 1, 2 and 3 of the Optional Protocol, and therefore limits the protection of children against these crimes.” (Iceland CRC/C/OPSC/ISL/CO/1, para. 15)

Article 5 concerns extradition. The offences covered by this Protocol must be included in all extradition treaties, and in the absence of a specific treaty States may use the Optional Protocol as the legal basis for making an extradition. If extradition is refused the ratifying State must try to get the alleged offender prosecuted in the State in which the offence was committed. Three States (El Salvador, Lao People’s Democratic Republic and Viet Nam) have entered specific reservations to this article, and the Committee has expressed concern about other States’ failure to implement its provisions. In particular it objects to States limiting extradition only to those States who agree reciprocal measures:

“The Committee notes with concern that extradition is made only upon existence of a bilateral agreement and on the basis of reciprocity.

“The Committee recommends that the State Party amend its legislation by making extradition possible, using the present Optional Protocol as a legal basis for extradition in respect of such offences.” (Qatar CRC/C/OPSC/QAT/CO/1, paras. 25 and 26)

Article 6 requires the maximum degree of cooperation with other States in the prosecution of offenders. Article 7 requires seizure of goods and proceeds and closure of any premises relating to the commission of these offences.

Article 8 addresses the need to protect the child victims or survivors concerned. It states that their best interests must be “a primary consideration” of the criminal justice system and that specialist training must be provided for those who work with child victims. Without prejudicing defendants’ right to a fair hearing, the criminal justice system must also help child victims by:

- adapting procedures which recognize their vulnerability and special needs (for example, by the use of video evidence) and providing appropriate support services;
- keeping them fully informed about the case and of their rights;
- allowing their views, needs and concerns to be considered in any proceedings which

affect their personal interests (for example, by deciding not to prosecute);

- protecting their identity and privacy;
- providing any necessary protection to them and to their relatives;
- avoiding unnecessary delay in the execution of cases and remedies.

The State must also provide necessary safeguards for people and organizations that work with child victims. Article 8 also requires that any uncertainty over the age of the child should not prevent the initiation of criminal investigations.

In 2005 a resolution of the United Nations Economic and Social Council adopted the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (resolution 2005/20). These Guidelines, which were proposed by the International Bureau for Children’s Rights, detail what measures are needed to secure the following rights for child victims and witnesses:

- to be treated with dignity and compassion
- to be protected from discrimination
- to be informed
- to be heard and to express views and concerns
- to effective assistance
- to privacy
- to be protected from hardship during the justice process
- to safety
- to reparation, and
- to special preventive measures.

Article 8 does not contain an explicit provision for the decriminalization of child victims – for example giving child prostitutes immunity from prosecution. This is a controversial issue: proponents for non-criminalization argue that children engaged in prostitution should be treated as child abuse victims; others argue that de-criminalizing child prostitution may encourage the deliberate exploitation of minors, and that older children, over the legal ages of consent and criminal responsibility, should have the same liability as adults.

The Committee, however, always recommends that all children under the age of 18 should be protected under this Optional Protocol, including those whose age is unknown but who appear to be under 18 and expresses concern at any criminalization, stigmatization or insensitive treatment of child victims:





“The Committee is concerned about the information that child victims of crimes covered by the Optional Protocol are often stigmatized and socially marginalized and may be held responsible, tried and placed in centres for the deprivation of liberty.” (Morocco CRC/C/OPSC/MAR/CO/1, para. 23)

“The Committee notes that protection measures are contained in the Juvenile Delinquent Act, including the establishment of special courts for juveniles, but is concerned that they refer essentially to children accused and/or convicted of a crime rather than to children victims thereto. It is further concerned that:

(a) under the Evidence Act persons under the age of 18 are not competent to testify, except in case of alleged rape or offences against morality;

(b) victims of acts covered by the Optional Protocol, notably children used for prostitution, may be prosecuted and – if foreign nationals – expelled.

“The Committee recommends that the State Party take all necessary measures to ensure that child victims of any of the crimes under the Optional Protocol are as such neither criminalized nor penalized. It further recommends that the State Party protect child victims and witnesses at all stages of the criminal justice process in accordance with article 8 of the Optional Protocol. To this end, the State Party should also be guided by the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Resolution No. 2005/20). The State Party should in particular:

(a) allow the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected;

(b) use child-sensitive procedures to protect children from hardship during the justice process, including special interview rooms designed for children and child-sensitive methods of questioning;

(c) establish special procedures for the collection of evidence from child victims and witnesses – such as video and audio recording of the child declarations – in order to reduce the number of interviews, statements and hearings.” (Syrian Arab Republic CRC/C/OPSC/SYR/CO/1, paras. 18 and 19)

Article 9 requires States to take preventive measures against these offences, including banning promotional advertising, and to disseminate information about the harmful effects of the offences and these preventive measures to the general public as well as to children themselves (encouraging the participation of children in this process). The article also obliges States to ensure that child victims are provided with social rehabilitation and access to compensation procedures.

Under article 10, States must take all necessary steps for effective cross-national collaboration to prevent, detect and punish those who are responsible for sale of children, child pornography and prostitution, and to assist the social rehabilitation of child victims. It also mentions the need to tackle the root causes of the offences, such as poverty and underdevelopment.

The Committee naturally welcomes any measures under articles 9 and 10, though it usually sees room for improvement, for example congratulating Denmark on its many initiatives but encouraging it to improve aspects of witness protection and the vetting of people working with children:

“The Committee... welcomes the establishment of a special investigation unit specialized in criminal offences committed on the Internet, including child pornography, by the Office of the National Commissioner of Police, and three knowledge centres, the Team for Sexually Abused Children at the Copenhagen University Hospital, the Danish National Centre for Social Efforts against Child Sexual Abuse (SISO) and Janus, a knowledge centre concerning young people who have committed sexual assaults on other children and young people.

“The Committee notes with great appreciation that the National Commissioner of the Police, Save the Children Denmark and the telecommunication services provider TDC have introduced a filter for blocking access to Internet sites containing images of child pornography and that the filter has been successful in blocking access to these sites for an average of 1,700 users every day.

“Furthermore, the Committee notes with appreciation measures taken for the physical and psychological recovery of children, such as subsidies for consultations with psychologists, and the increase in the penalties for the recording and dissemination of child pornography.

“The Committee notes with interest that a witness protection programme has been developed in Denmark but is concerned that repatriation of trafficking victims is prioritized with few guarantees of witness protection measures in the country of origin.

“The Committee recommends that children who cannot be guaranteed witness protection upon repatriation be guaranteed permission to reside in Denmark and receive protection. Access to shelter and temporary residence permission for foreign child victims of trafficking should be granted during the investigation period.

“The Committee welcomes the Act on Obtaining Criminal Records Disclosures in Connection with Employment of Staff, which entered into force on 1 July 2005 and which strengthens the efforts against sexual abuse

of children under the age of 15. However, the Committee notes with concern that this act only covers future employees and volunteers, who will have direct contact with children under the age of 15, to be hired by public administration authorities, and that it leaves those already working with children outside its scope of application.

“In order to prevent recidivism among persons convicted of sexual offences against children, the Committee recommends that the State Party consider amending the act on obtaining criminal records disclosures in connection with employment to cover all employees and volunteers already working with children. The Committee further recommends that the State Party provide adequate guidelines and training for the personnel responsible for administering requests for criminal record disclosures.” (Denmark CRC/C/OPSC/DNK/CO/1, paras. 5 to 7, 25, 26, 29 and 30)

Effective prevention is only possible if the State understands the scale and nature of the problem, which is why the Committee pays close attention to reporting States’ monitoring of the phenomenon, for example taking China to task for having inadequate data:

“The Committee regrets the limited statistical data on sexual exploitation and cross-border

trafficking included in the State Party’s report, both with regard to mainland China and the Macau SAR. It is further concerned that the data refer almost exclusively to the number of women and children rescued rather than those abducted, and that data often refer to different time periods, which hampers accurate assessment and monitoring of the situation regarding the sale of children, child prostitution and child pornography.” (China CRC/C/OPSC/CHN/CO/1, para. 8)

Article 11 is similar to article 41 of the Convention, providing that the Optional Protocol shall not get in the way of measures more conducive to children’s rights. And as with the Convention, under article 12 States must submit a full report on implementation to the Committee two years after ratification. Thereafter reporting on the Optional Protocol can be included within States’ five yearly periodic reports on the Convention.

The remaining articles describe ratification, implementation, denunciations and amendments in line with other human rights treaties; the absence of provisions for entering a reservation does not mean that a State may not adopt reservations when it ratifies.



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

Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to the Optional Protocol, including

- identification and coordination of the responsible departments and agencies at all levels of government (the Optional Protocol is relevant to **departments of justice, foreign affairs, home affairs, labour, education, social welfare and health**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?
- adoption of a strategy to secure full implementation
 - which includes where necessary the identification of goals and indicators of progress?
 - which does not affect any provisions which are more conducive to the rights of the child?
 - which recognizes other relevant international standards?
 - which involves where necessary international cooperation?

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of the Optional Protocol widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to the Optional Protocol likely to include the training of **police, border staff, court officers, social workers, adoption agencies' staff and health personnel**)?

• Specific issues in implementing the Optional Protocol

- Are all forms of selling children - transactions whereby a child is transferred by any person or group of person to another for remuneration - criminal offences under domestic law?

Is it a criminal offence to offer, deliver or accept a child for the purpose of:

- sexually exploiting the child?
- transferring the child's organs for profit?
- engaging the child in forced labour?
- Is it a criminal offence to improperly induce consent as an intermediary for the adoption of a child?
- Is it a criminal offence to offer, obtain, procure or provide a child for child prostitution (using the child in sexual activities for any form of gain)?
- Is it a criminal offence to produce, distribute, disseminate, import, export, offer, sell or possess for any of these purposes, child pornography (any representation of



How to use the checklist, *see page XIX*

- the child engaged in any sexual activity or any representation of the sexual parts of children for a sexual purpose)
- Do these criminal offences have appropriate penalties, reflecting their grave nature?
 - Are there provisions for the seizure or confiscation of any goods relating to or proceeds derived from these offences?
 - Are measures available to close premises used to commit these offences?
 - Are all forms of advertising or promoting these offences prohibited?
 - Are legal entities (for example companies) liable for these offences?
 - Does domestic criminal law in relation to these offences apply to all foreign nationals who commit them within the jurisdiction?
 - Are these offences included as extraditable offences in all treaties and agreements between the State and other countries?
 - Does the State provide the greatest measures of assistance to all other countries in the investigation, prosecution or seizure of property relating to the commission of these offences?
 - Are child victims of treated humanely as victims, not criminals, and provided with all appropriate forms of support and assistance?
 - Are child victims kept fully informed about their rights and about the details of any criminal cases relating to their exploitation?
 - Do all stages of the criminal justice procedures recognize vulnerability of child victims and give primary consideration to their best interests?
 - Has the State used the United Nations Economic and Social Council's Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime when developing legislation, procedures, policies and practice for these children?
 - Is special training, particularly legal and psychological, provided for those who work with child victims?
 - Are criminal justice procedures adapted to accommodate children's special needs as witnesses?
 - Are child victims supported throughout legal processes?
 - Are the views, needs and concerns of child victims ascertained and considered in any proceeding affecting their personal interests?
 - Is the privacy of child victims fully protected within the criminal justice system?
 - Does the law prohibit any form of identification of child victims?
 - Is appropriate provision made available where necessary to protect child victims and their families or witnesses on their behalf from intimidation or retaliation?
 - Are appropriate measures available where necessary to protect the safety and integrity of those who are involved in helping child victims?
 - Is unnecessary delay avoided in all cases involving child victims and in the delivery of compensation?
 - Does the State disseminate information to children and the general public, through education, training and publicity, about the harmful effects of sale of children and child sexual exploitation and how to prevent these activities?



How to use the checklist, see page XIX

- Are children involved in the preparation of this information?
- Are adequate measures taken for the full social reintegration and recovery of child victims?
- Do child victims have access to procedures to seek compensation from those legally responsible?
- Does the State give full cooperation and support to agencies, both within the jurisdiction and internationally, who aim to prevent, detect and punish those committing these offences?
- Does the State give full cooperation and support to agencies, within the jurisdiction and internationally, who assist child victims?

Reminder: The Convention is indivisible and its articles interdependent. The Optional Protocol should not be considered in isolation.

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in jurisdiction without discrimination on any ground

Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children

Article 6: right to life and maximum possible survival and development

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

Closely related articles

Articles whose implementation is related to that of the Optional Protocol include:

Article 8: preservation of child's identity

Article 11: protection from illicit transfer and non-return

Article 16: protection from arbitrary interference in privacy, family and home

Article 20: children without families

Article 21: adoption

Article 32: child labour

Article 33: drug abuse and trafficking

Article 34: sexual exploitation

Article 35: prevention of abduction, sale and trafficking

Article 36: other forms of exploitation

Article 39: rehabilitative care

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

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Guide to the United Nations system

This appendix gives brief directory information about agencies and bodies within the United Nations family which are relevant to the Convention on the Rights of the Child and its implementation

P

PRINCIPAL ORGANS

• General Assembly

The General Assembly is the main deliberative organ of the United Nations. It is composed of representatives of all Member States, each of which has one vote. As of December 2006 there were 192 Members. The General Assembly normally meets once a year from September to December at United Nations Headquarters in New York, but special sessions and emergency special sessions may also be called.

While the Assembly is empowered to make only non-binding recommendations to States on international issues within its competence, it has, nonetheless, initiated actions – political, economic, humanitarian, social and legal – which have affected the lives of millions of people throughout the world. The landmark Millennium Declaration, adopted in 2000, reflects the commitment of Member States to reach specific goals spelled out in the Declaration to attain peace, security and disarmament along with development and poverty eradication, to protect our common environment, to meet the special needs of Africa and to strengthen the United Nations.

The General Assembly receives and considers reports from other organs. The Committee on the Rights of the Child is required to report on its activities to the General Assembly, through the Economic and Social Council, every two years (article 44(5)).

*United Nations Headquarters,
New York, NY 10017, USA*

Tel: +1 212 963 1234

Fax: +1 212 963 4879

Website: www.un.org/aboutun/mainbodies.htm

• Security Council

The United Nations Charter gives the Security Council primary responsibility for maintaining international peace and security. The Council may convene at any time, whenever peace is threatened. Under the Charter, all Member States are obligated to carry out the Council's decisions.

When the Council considers a threat to international peace, it first explores ways to settle the dispute peacefully. It may suggest principles for a settlement or undertake mediation. In the event of fighting, the Council tries to secure a ceasefire. It may send a peacekeeping mission to help the parties maintain the truce and to keep opposing forces apart.

The Council also adopts resolutions and makes recommendations; for instance on children and armed conflict (1999).

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Tel: +1 212 963 1234

Fax: +1 212 963 4879

Website: www.un.org/Docs/sc

• International Court of Justice

The principal judicial organ of the United Nations operates under a Statute which is an integral part of the Charter of the United Nations. The Court has a dual role: to settle in accordance with international law the legal disputes submitted to it by States, and to give advisory opinions on legal questions referred to it by duly authorized international organs and agencies. It decides in accordance with international treaties and conventions in force, international custom and the general principles of law.

Peace Palace

2517 KJ The Hague, The Netherlands

Tel: +31 70 302 2323

Fax: +31 70 364 9928

Website: www.icj-cij.org

• Economic and Social Council

The Economic and Social Council (ECOSOC) serves as the central forum for discussing international economic and social issues, and for formulating policy recommendations addressed to Member States and the United Nations system. It is responsible for promoting higher standards of living, full employment, and economic and social progress; identifying solutions to international economic, social and health problems; facilitating international cultural and educational cooperation; and encouraging universal respect for human rights and fundamental freedoms. It has the power to make or initiate studies and reports on these issues. It also has the power to assist the preparations and organization of major international conferences in the economic and social and related fields and to facilitate a coordinated follow-up to these conferences.

The ECOSOC was established under the United Nations Charter as the principal organ to coordinate economic, social, and related work of the 14 United Nations specialized agencies, 5 regional commissions and 10 functional commissions, including the Commission for Social Development, the Commission on Population and Development, the Commission on the Status of Women. The Council also receives reports from 11 Funds and programmes.

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DPCSD Room 2963J,*

New York, NY 10017, USA
Tel: +1 212 963 1234
Fax: +1 212 963 4879
Website: www.un.org/docs/ecosoc

Human Rights Bodies

• Office of the High Commissioner for Human Rights (OHCHR)

OHCHR, a department of the United Nations Secretariat, is mandated to promote and protect the enjoyment and full realization, by all people, of all rights established in the Charter of the United Nations and in international human rights laws and treaties. The mandate includes preventing human rights violations, securing respect for all human rights, promoting international cooperation to protect human rights, coordinating related activities throughout the United Nations, and strengthening and streamlining the United Nations system in the field of human rights. In addition to its mandated responsibilities, the Office leads efforts to integrate a human rights approach within all work carried out by United Nations agencies.

The Office, formerly known as the United Nations Centre for Human Rights, provides secretariat and substantive services to the United Nations Human Rights bodies, including the Committee on the Rights of the Child.

The Office conducts research and studies on human rights, coordinates liaison with NGOs, prepares publications, collects and disseminates information. It also provides, upon request from governments, advisory services and technical assistance. For details see Advisory Services and technical cooperation in the field of human rights, Human Rights Fact Sheet No.3 (rev.1), Centre for Human Rights, 1996.

*Palais des Nations,
1211 Geneva 10, Switzerland
Tel: +41 22 917 9000
Fax: +41 22 917 9016
Website: www.ohchr.org*

• Human Rights Council (HRC)

The Human Rights Council is the body created in April 2006 by United Nations Member States to promote universal respect for the protection of all human rights and fundamental freedoms for all. The Council replaces the Commission on Human Rights and is a subsidiary organ of the General Assembly. While the Commission met only once per year in a single six-week session, the Geneva-based Council will hold no fewer than three sessions per year (including a main session) and will also be able to hold special sessions when necessary.

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1211 Geneva 10, Switzerland
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Fax: +41 22 917 9016
Website: www.ohchr.org*

The Human Rights Council assumes several "special procedures", which is the general name given to the mechanisms established by the Commission on Human Rights to address either specific country situations or thematic issues in all parts of the world.

Currently, there are 28 thematic and 13 country mandates in place, including:

– **Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography** established in 1990 to fulfil the mandate of assessing the situation of the sale of children, child prostitution and child pornography worldwide.

– **Special Rapporteur on the right to education**

– **Special Rapporteur on the right to food**

– **Special Rapporteur on adequate housing**

– **Special Rapporteur on freedom of religion or belief**

– **Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment**

– **Special Rapporteur on violence against women, its causes and consequences**

– **Special Rapporteur on the human rights of migrants**

• Committee against Torture

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force in 1987, and establishes an expert committee of 10, elected by States Parties to the Convention. It considers reports, makes general comments and where a State has accepted its competence may make inquiries about individual States Parties, and also about applications from individuals claiming to be victims of a violation of the Convention.

*Palais des Nations,
1211 Geneva 10, Switzerland
Tel: +41 22 917 9000
Fax: +41 22 917 9016
Website: www.ohchr.org*

• Committee on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights entered into force in 1976. The Economic and Social Council of the General Assembly (ECOSOC) at first established a working group on implementation, to assist it with consideration of reports. In 1985, ECOSOC, by resolution 1985/17, renamed the Working Group the Committee on Economic, Social and Cultural Rights, to be composed of 18 experts. It considers States Parties' reports, and reports to ECOSOC.

*Palais des Nations,
1211 Geneva 10, Switzerland
Tel: +41 22 917 9000
Fax: +41 22 917 9016
Website: www.ohchr.org*

• Committee on the Elimination of Discrimination against Women

The Convention on the Elimination of All Forms of Discrimination against Women entered into force in 1981 and establishes an expert committee of 23, elected by States Parties. It considers progress made in implementation, including considering reports submitted by States Parties.

*United Nations Division for the Advancement of Women,
Department of Economic and Social Affairs,
2 UN Plaza, DC2-12th Floor,
New York, NY 10017, USA*

Tel: +1 212 963 1151
Fax: +1 212 963 3463
Website: www.un.org/womenwatch/daw/cedaw/committee.htm

• Committee on the Elimination of Racial Discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination entered into force in 1969 and establishes a Committee of 18 experts elected by States Parties. The Committee examines reports from States Parties, and where a State has accepted its competence, may consider communications from individuals or groups of individuals claiming to be victims of a violation of the Convention.

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1211 Geneva 10, Switzerland
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Website: www.ohchr.org*

• Committee on the Rights of the Child

For detailed description of mandate and role, see article 43, page 637.

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1211 Geneva 10, Switzerland
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Website: www.ohchr.org*

• Human Rights Committee

The International Covenant on Civil and Political Rights entered into force in 1976, and establishes an expert committee of 18. The Human Rights Committee considers reports from States Parties. Under the First Optional Protocol to the Covenant, States may recognize the competence of the Committee to consider communications from individuals alleging violations of human rights. A Second Optional Protocol, aimed at abolition of the death penalty, came into force in 1991.

*Palais des Nations,
1211 Geneva 10, Switzerland
Tel: +41 22 917 9000
Fax: +41 22 917 9016
Website: www.ohchr.org*

• Committee on the Protection of the Rights of All Migrant Workers and Members of their Families

The Committee monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by its State Parties. It is the newest treaty body* which held its first session in March 2004. It meets in Geneva and normally holds one session per year.

*Palais des Nations,
1211 Geneva 10, Switzerland
Tel: +41 22 917 9000
Fax: +41 22 917 9016
Website: www.ohchr.org*

**The International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities, both adopted in 2006, will establish new Treaty Bodies which will become operational as the Conventions come into force.*

OFFICES, PROGRAMMES AND FUNDS

• Joint United Nations Programme on HIV/AIDS (UNAIDS)

Established in 1996, UNAIDS brings together the efforts and resources of 10 organizations of the United Nations system to the global AIDS response. Cosponsors include UNHCR, UNICEF, WFP, UNDP, UNFPA, UNODC, ILO, UNESCO, WHO and the World Bank. Based in Geneva, the UNAIDS secretariat works on the ground in more than 75 countries worldwide. It strives to prevent the spread of HIV/AIDS amongst children and youth and to reduce the vulnerability of children, families and communities to its impact.

20, avenue Appia,
1211 Geneva 27, Switzerland
Tel: +41.22.791.3666
Fax: +41.22.791.4187
Website: www.unaids.org

• Office of the United Nations High Commissioner for Refugees (UNHCR)

The Office of the United Nations High Commissioner for Refugees was established in 1950 by the United Nations General Assembly. The agency is mandated to lead and coordinate international action to protect refugees and resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and well-being of refugees. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or to resettle in a third country. UNHCR has developed specific policies, practices and guidelines relating to refugee children.

94 rue de Montbrillant,
Case postale 2500,
1211 Geneva 2, Switzerland
Tel: +41 22 739 8111
Fax: +41 22 731 9546
Website: www.unhcr.org

• United Nations Children's Fund (UNICEF)

In 1946 the General Assembly established the United Nations International Children's Emergency Fund as a temporary body to provide emergency assistance to children in war-ravaged countries. By resolution in 1953 it placed the Fund on a permanent footing, changing the name but retaining the acronym.

UNICEF is mandated by the United Nations General Assembly to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential. UNICEF focuses its attention on implementing the rights contained in the Convention on the Rights of the Child, using them as a blueprint for its programmes. UNICEF programmes seek to combine strategies for improving access to and quality of basic social services together with legal, policy, and public education initiatives that promote and protect children's rights. UNICEF assists governments in revising policies and institutions and in making and enforcing laws that uphold the best interests of children. An integral part of

UNICEF's approach is to create opportunities for children to express their views on issues affecting their lives and to actively participate in decision-making processes.

Three United Nations Plaza,
New York, NY 10017, USA
Tel: +1 212 326 7000
Fax: +1 212 888 7465
Website: www.unicef.org

• United Nations Development Fund for Women (UNIFEM)

UNIFEM is the women's fund at the United Nations. It provides financial and technical assistance to innovative programmes and strategies to foster women's empowerment and gender equality. Placing the advancement of women's human rights at the centre of all of its efforts, UNIFEM focuses its activities on four strategic areas: (1) reducing feminized poverty, (2) ending violence against women, (3) reversing the spread of HIV/AIDS among women and girls, and (4) achieving gender equality in democratic governance in times of peace as well as war.

304 East 45th Street, 15th Floor
New York, NY 10017, USA
Tel: +1 212 906 6400
Fax: +1 212 906 6705
Website: www.unifem.org

• United Nations Development Programme (UNDP)

UNDP is the United Nations' global development network, an organization advocating for change and connecting countries to knowledge, experience and resources to help people build a better life. UNDP is on the ground in 166 countries, working with countries on their own solutions to global and national development challenges. World leaders have pledged to achieve the Millennium Development Goals. UNDP's network links and coordinates global and national efforts to reach these Goals. The annual Human Development Report, commissioned by UNDP, focuses the global debate on key development issues, providing new measurement tools, innovative analysis and often controversial policy proposals.

One United Nations Plaza,
New York, NY 10017, USA
Tel: +1 (212) 906 5000
Fax: +1 (212) 906 5364
Website: www.undp.org

• United Nations Environment Programme (UNEP)

UNEP is the United Nations system's designated entity for addressing environmental issues at the global and regional level. Its mandate is to coordinate the development of environmental policy consensus by keeping the global environment under review and bringing emerging issues to the attention of governments and the international community for action. It provides leadership and encourages partnership in caring for the environment by inspiring, informing and enabling nations and peoples to improve their quality of life without compromising that of future generations.

United Nations Avenue, Gigiri,
PO Box 30552,

00100 Nairobi, Kenya
Tel: +254 20 7621234
Fax: +254 20 7624489/90
Website: www.unep.org

• United Nations Human Settlements Programme (UN-Habitat)

UN-HABITAT is mandated by the United Nations General Assembly to promote socially and environmentally sustainable towns and cities with the goal of providing adequate shelter for all. Its mission is to promote socially and environmentally sustainable human settlements development and the achievement of adequate shelter for all.

P.O. Box 30030, GPO,
00100 Nairobi, Kenya
Tel: +254 20 7621234
Fax: +254 20 7624266
Website: www.unhabitat.org

• United Nations Office on Drugs and Crime (UNODC)

UNODC is the umbrella organization that makes up the United Nations Drug Control Programme (UNDCP) and the Centre for International Crime Prevention (CICP). It also includes the Terrorism Prevention Branch and the Global Programmes against Money Laundering, Corruption, Organized Crime and Trafficking in Human Beings. All the organizations are based in Vienna, Austria. UNODC works to educate the world about the dangers of drug abuse and to strengthen international action against drug production, trafficking and drug-related crime through alternative development projects, illicit crop monitoring and anti-money laundering programmes.

Vienna International Centre,
P.O. Box 500,
1400 Vienna, Austria
Tel: +43 1 260 600
Fax: +43 1 26060 5866
Website: www.unodc.org

• United Nations Population Fund (UNFPA)

UNFPA is an international development agency that promotes the right of every woman, man and child to enjoy a life of health and equal opportunity. UNFPA supports countries in using population data for policies and programmes to reduce poverty and to ensure that every pregnancy is wanted, every birth is safe, every young person is free of HIV/AIDS, and every girl and woman is treated with dignity and respect.

220 East 42nd Street,
New York, NY 10017, USA.
Tel: +1 212-297-5000
Fax: +1 212 297 4915
Website: www.unfpa.org

• World Food Programme (WFP)

As the food aid arm of the United Nations, WFP uses its resources to meet emergency needs and support economic and social development. The Agency also provides the logistics support necessary to get food aid to victims of natural disasters and displaced people. WFP works to put hunger at the centre of the international agenda, promo-

ting policies, strategies and operations that directly benefit the poor and hungry.

Via C.G. Viola 68, Parco dei Medici

00148 Rome, Italy

Tel: +39-06-65131

Fax: +39-06-6513 2840

Website: www.wfp.org

SPECIALIZED AGENCIES

These are separate autonomous organizations, “established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health and related fields”, and which have “been brought into relationship with the United Nations”. In some cases their activities are coordinated by ECOSOC.

• International Labour Organization (ILO)

Established in 1919; became a specialized agency of the United Nations in 1946. ILO seeks to improve working and living conditions through the adoption of international labour conventions and recommendations setting standards in such fields as wages, hours of work, conditions of employment and social security. It conducts research and technical cooperation activities with the aim of promoting democracy and human rights, alleviating unemployment and poverty, and protecting working people. ILO has a tripartite structure, representing governments, employers and workers. The International Labour Conference meets each year.

ILO aims to establish national policies to eliminate child labour effectively, and to raise the minimum age for work to a level consistent with the development of children. In addition, ILO established the Worst Forms of Child Labour Convention, 1999 (No. 182) that focuses on eliminating the most exploitative forms of child labour. In the field of technical cooperation, ILO has operated the IPEC Programme since 1992 to strengthen national capacities and to create a worldwide movement against child labour. The Programme has several specific international campaign activities to raise awareness among the general public, notably World Day against Child Labour, Red Card to Child Labour, and SCREAM (Supporting Children’s Rights through Education, the Arts and the Media).

International Labour Standards Department

4 Route des Morillons,

1211 Geneva 22, Switzerland

Tel: +41 22 799 7155/799 6111

Fax: +41 22 799 6771

Website: www.ilo.org

• Food and Agriculture Organization (FAO)

Established in 1945. FAO leads international efforts to defeat hunger. Serving both developed and developing countries, FAO acts as a neutral forum where all nations meet as equals to negotiate agreements and debate policy. FAO is also a source of knowledge and information, and helps developing countries and countries in tran-

sition modernize and improve agriculture, forestry and fisheries practices and ensure good nutrition for all. Since its founding in 1945, FAO has focused special attention on developing rural areas, home to 70 percent of the world’s poor and hungry people. FAO’s activities comprise four main areas: (1) Putting information within reach, serving as a knowledge network and using the expertise of its staff – agronomists, foresters, fisheries and livestock specialists, nutritionists, social scientists, economists, statisticians and other professionals – to collect, analyse and disseminate data that aid development; (2) Sharing policy expertise: FAO lends its years of experience to member countries in devising agricultural policy, supporting planning, drafting effective legislation and creating national strategies to achieve rural development and hunger alleviation goals; (3) Providing a meeting place for nations, and (4) Bringing knowledge to the field.

Viale Delle Terme di Caracalla,

00100 Rome, Italy

Tel: +39 06 57051

Fax: +39 06 5705 3152

Website: www.fao.org

• United Nations Educational, Scientific and Cultural Organization (UNESCO)

Established in 1945, the central purpose of UNESCO is to contribute to peace, security and development through education and intellectual cooperation. Because of its mandate for education and human rights teaching, a significant part of the Organization’s work has always been in the service of children’s rights. A major effort of the Organization since its foundation has been to ensure the child’s right to education. In working with its Member States, UNESCO has been concerned to promote not just literacy or instruction in the sciences, but an education that promotes tolerance and respect for others. In addition, support is provided for the Convention’s non-discrimination principle, by working actively for the education of girls and other marginalized groups, such as children with special needs, street children, children speaking minority languages, children in armed conflict.

UNESCO launched the Education for All movement at the World Conference on Education for All in 1990. It is a global commitment to provide quality basic education for all children, youth and adults. Ten years later, with many countries far from having reached this goal, the international community met again in Dakar, Senegal, and affirmed their commitment to achieving Education for All by the year 2015. They identified six key education goals which aim to meet the learning needs of all children, youth and adults by 2015.

7 Place de Fontenoy,

75700 Paris, France

Tel: +33 1 45 68 10 00

Fax: +33 1 45 67 16 90

Website: www.unesco.org

• World Health Organization (WHO)

The World Health Organization, established in 1948, has its headquarters in

Geneva, Switzerland, with Regional Offices in Alexandria; Copenhagen; Brazzaville; Manila; New Delhi and Washington. The work of WHO towards its main objective of the attainment by all peoples of the highest possible level of mental and physical health includes many activities aimed at children. These activities contribute to assuring the right of all children to health and health care. Specific examples include Integrated Management of Childhood Illness (IMCI), a strategy jointly developed with UNICEF, to address the major killers of children: pneumonia, diarrhoea, measles, malaria and malnutrition through a combination of preventive and treatment interventions. WHO’s Expanded Programme on Immunization aims to ensure that children everywhere receive protection against common diseases for which vaccines exist. Promotion of better nutrition, including breastfeeding and the prevention of injury, are other examples of how WHO is working to protect children’s rights in the area of health. The Organization also has an initiative addressed to school children and an adolescent health programme targeting the special needs and rights of this group of children. The World Health Assembly is held annually.

20 Avenue Appia,

1211 Geneva 27, Switzerland

Tel: +41 22 791 2111

Fax: +41 22 791 0746

Website: www.who.int

• World Bank Group

The World Bank Group includes the International Bank for Reconstruction and Development (IBRD); the International Development Association (IDA); and the International Finance Corporation (IFC). The IBRD was established to promote the international flow of capital for productive purposes and to assist in financing the rebuilding of nations devastated by the Second World War. Its main objective now is lending for productive projects or to finance reform programmes which will lead to economic growth in its less developed member countries. The IDA’s purpose is to promote economic development by providing finance to the less developed regions of the world on much more concessionary terms than those of conventional loans. The IFC’s particular purpose is to promote the growth of the private sector and to assist productive private enterprises in its developing member countries, where such enterprises can advance economic development.

1818 H Street NW,

Washington DC 20433, USA

Tel: +1 202 477 1234

Fax: +1 202 477 6391

Website: www.worldbank.org

• International Monetary Fund (IMF)

The purposes of the IMF are to promote international monetary cooperation through consultation and collaboration; facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real

income; promote exchange stability and orderly exchange arrangements; assist in the establishment of a multilateral system of payments and the elimination of foreign exchange restrictions; assist members through the temporary provision of financial resources to correct maladjustments in their balance of payments.

700 19th Street NW,
Washington DC 20431, USA
Tel: +1 202 623 7090
Fax: +1 202 623 6220
Website: www.imf.org

• World Tourism Organization (UNWTO)

The UNWTO serves as a global forum for tourism policy issues and practical source of tourism know-how. It plays a central and decisive role in promoting the development of responsible, sustainable and universally accessible tourism, with the aim of contributing to economic development, interna-

tional understanding, peace, prosperity and universal respect for, and observance of, human rights and fundamental freedoms.

The Task Force to Protect Children from Sexual Exploitation in Tourism, established by the UNWTO in 1997 as a follow-up to the Stockholm Congress against Commercial Sexual Exploitation of Children (August 1996), is a global action whose aim is to prevent, uncover, isolate and eradicate the sexual exploitation of children in tourism. The Task Force's on-line service, the Child Prostitution and Tourism Watch, provides information on current projects and activities, partners' tourism policy documents, related facts and figures and other measures to help prevent sexual abuse of children in tourism networks.

Calle Capitán Haya, 42,
28020 Madrid, Spain
Tel.: +34 915 678 100
Fax: +34 915 713 733
Website: www.unwto.org

• International Organization for Migration (IOM)

Established in 1951, IOM is the leading inter-governmental organization in the field of migration and works closely with governmental, intergovernmental and non-governmental partners. With 120 member States, a further 19 States holding observer status and offices in over 100 countries, IOM works to help ensure the orderly and humane management of migration, to promote international cooperation on migration issues, to assist in the search for practical solutions to migration problems and to provide humanitarian assistance to migrants in need, including refugees and internally displaced people.

17, Route des Morillons,
1211 Geneva 19, Switzerland
Tel: +41 22 717 9111
Fax: +41 22 798 6150
Website: www.iom.int



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Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession
by General Assembly resolution 44/25 of 20 November 1989
Entry into force 2 September 1990, in accordance with article 49

Preamble

T

he States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in

particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

● Article 1

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

● Article 2

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

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

● Article 3

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

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

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

● Article 4

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

● Article 5

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

child of the rights recognized in the present Convention.

● Article 6

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

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

● Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

● Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

● Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall

further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

● Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

● Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

● Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

● Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

● **Article 14**

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

● **Article 15**

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

● **Article 16**

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

● **Article 17**

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

● **Article 18**

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

● **Article 19**

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

● **Article 20**

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, *inter alia*, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

● **Article 21**

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that

the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

● **Article 22**

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

● **Article 23**

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is

made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

● Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

- (a) To diminish infant and child mortality;
- (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c) To combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
- (d) To ensure appropriate pre-natal and post-natal health care for mothers;
- (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
- (f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abo-

lishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

● Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

● Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

● Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

● Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;

- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;

- (d) Make educational and vocational information and guidance available and accessible to all children;

- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

● Article 29

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

- (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

● Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other

members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

● Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

● Article 32

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

● Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

● Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
(a) The inducement or coercion of a child to engage in any unlawful sexual activity;
(b) The exploitative use of children in prostitution or other unlawful sexual practices;
(c) The exploitative use of children in pornographic performances and materials.

● Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

● Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to all aspects of the child's welfare.

● Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

● Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

● Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

● Article 40

1. States Parties recognize the right of every child alleged as, accused of, or reco-

gnized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
(i) To be presumed innocent until proven guilty according to law;
(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
(vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation;

foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

● **Article 41**

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State.

PART II

● **Article 42**

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

● **Article 43**

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of eighteen experts of high moral standing and recognized competence in the field covered by this Convention.^{1/} The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall

be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

● **Article 44**

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

- (a) Within two years of the entry into force of the Convention for the State Party concerned;
- (b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

● **Article 45**

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

● **Article 46**

The present Convention shall be open for signature by all States.

● **Article 47**

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

● **Article 48**

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

● **Article 49**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General

of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

● **Article 50**

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the

conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all

States. Such notification shall take effect on the date on which it is received by the Secretary-General

● **Article 52**

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

● **Article 53**

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

● **Article 54**

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000 entry into force on 12 February 2002

T

he States Parties to the present Protocol,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Reaffirming that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences it has for durable peace, security and development,

Condemning the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places that generally have a significant presence of children, such as schools and hospitals,

Noting the adoption of the Rome Statute of the International Criminal Court, in particular, the inclusion therein as a war crime, of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts,

Considering therefore that to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child there is a need to increase the protection of children from involvement in armed conflict,

Noting that article 1 of the Convention on the Rights of the Child specifies that, for the purposes of that Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier,

Convinced that an optional protocol to the Convention that raises the age of possible recruitment of persons into armed forces and their participation in hostilities will contribute

effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Noting that the twenty-sixth International Conference of the Red Cross and Red Crescent in December 1995 recommended, *inter alia*, that parties to conflict take every feasible step to ensure that children below the age of 18 years do not take part in hostilities,

Welcoming the unanimous adoption, in June 1999, of International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which prohibits, *inter alia*, forced or compulsory recruitment of children for use in armed conflict,

Condemning with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard,

Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

Stressing that the present Protocol is without prejudice to the purposes and principles contained in the Charter of the United Nations, including Article 51, and relevant norms of humanitarian law,

Bearing in mind that conditions of peace and security based on full respect of the purposes and principles contained in the Charter and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflicts and foreign occupation,

Recognizing the special needs of those children who are particularly vulnerable to recruitment or use in hostilities contrary to the present Protocol owing to their economic or social status or gender,



Mindful of the necessity of taking into consideration the economic, social and political root causes of the involvement of children in armed conflicts,

Convinced of the need to strengthen international cooperation in the implementation of the present Protocol, as well as the physical and psychosocial rehabilitation and social

reintegration of children who are victims of armed conflict, *Encouraging* the participation of the community and, in particular, children and child victims in the dissemination of informational and educational programmes concerning the implementation of the Protocol,

Have agreed as follows:

● **Article 1**

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

● **Article 2**

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

● **Article 3**

1. States Parties shall raise in years the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:

- (a) Such recruitment is genuinely voluntary;
- (b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians;
- (c) Such persons are fully informed of the duties involved in such military service;
- (d) Such persons provide reliable proof of age prior to acceptance into national military service.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

● **Article 4**

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible

measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article shall not affect the legal status of any party to an armed conflict.

● **Article 5**

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

● **Article 6**

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of the present Protocol within its jurisdiction.

2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.

3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

● **Article 7**

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with the States Parties concerned and the relevant international organizations.

2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes or, *inter alia*, through a voluntary fund established in accordance with the rules of the General Assembly.

● **Article 8**

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.

2. Following the submission of the comprehensive report, each State Party shall include in the reports it submits to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

● **Article 9**

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

3. The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 3.

● **Article 10**

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

● **Article 11**

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General. If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.



● **Article 12**

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under

the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the

present Protocol and any earlier amendments they have accepted.

● **Article 13**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Adopted and opened for signature, ratification and accession
by General Assembly resolution A/RES/54/263 of 25 May 2000
entered into force on 18 January 2002

T

he States Parties to the present Protocol,

Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Porno-

graphy on the Internet, held in Vienna in 1999, in particular its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children,

Believing also that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and believing further in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental

Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of

the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Have agreed as follows:

● Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

● Article 2

For the purposes of the present Protocol:

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

● Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in article 2:

(i) Offering, delivering or accepting, by whatever means, a child for the purpose of:
a. Sexual exploitation of the child;
b. Transfer of organs of the child for profit;
c. Engagement of the child in forced labour;

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.

3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in

paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

● Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.

2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:

(a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;

(b) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the aforementioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

● Article 5

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider the present Protocol to be a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extradita-

ble offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

● Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

● Article 7

States Parties shall, subject to the provisions of their national law:

(a) Take measures to provide for the seizure and confiscation, as appropriate, of:

(i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;

(ii) Proceeds derived from such offences;

(b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);

(c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

● Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

- (a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
 - (b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
 - (c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
 - (d) Providing appropriate support services to child victims throughout the legal process;
 - (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
 - (f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
 - (g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.
2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.
 3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.
 4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.
 5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.
 6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

● **Article 9**

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.
2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage

the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.
4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.
5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

● **Article 10**

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.
2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.
3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.
4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

● **Article 11**

- Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:
- (a) The law of a State Party;
 - (b) International law in force for that State.

● **Article 12**

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.
2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Conven-

tion, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

● **Article 13**

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

● **Article 14**


1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

● **Article 15**

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

● **Article 16**

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall



enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the


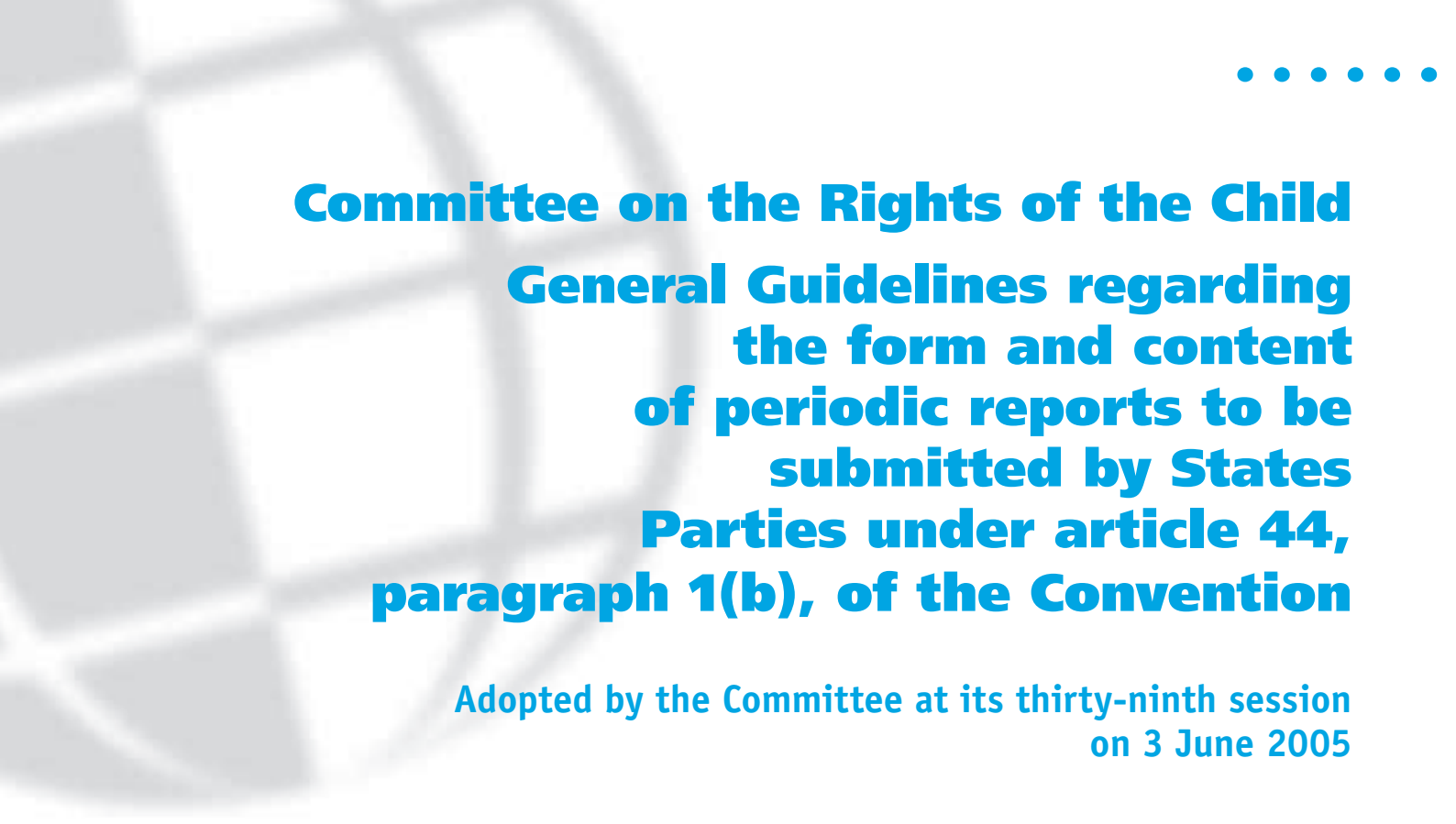
present Protocol and any earlier amendments they have accepted.

● **Article 17**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall

be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.



Committee on the Rights of the Child

General Guidelines regarding the form and content of periodic reports to be submitted by States Parties under article 44, paragraph 1(b), of the Convention

Adopted by the Committee at its thirty-ninth session
on 3 June 2005



Introduction and purpose of reporting

1. These guidelines for periodic reports replace those adopted by the Committee at its thirteenth session on 11 October 1996 (CRC/C/58). The present guidelines do not affect any request the Committee may make under article 44, paragraph 4, of the Convention on the Rights of the Child for States Parties to provide further information relevant to the implementation of the Convention.

2. These guidelines will cover all periodic reports submitted after 31 December 2005. The present guidelines include an overview of the purpose and organization of the report and the substantive information required under the Convention. Finally the annex provides more detail on the type of statistical data required by the Committee in accordance with the substantive provisions of the Convention.

3. The present guidelines group the articles of the Convention in clusters with a view to assisting States Parties in the preparation of their reports. This approach reflects the holistic perspective on children's rights taken by the Convention: i.e. that they are indivisible and interrelated, and that equal importance should be attached to each and every right recognized therein.

4. The periodic report should provide the Committee with a basis for constructive dialogue with the State Party about the implementation of the Convention and the enjoyment of human rights by children in the State Party. Consequently, reports must strike a balance in describing the formal legal situation and the situation in practice. Therefore the Committee requests

that for each cluster the State Party provide information with regard to: follow-up, monitoring, resource allocation, statistical data and challenges to implementation, as stated in paragraph 5, below.

SECTION I: ORGANIZATION OF THE REPORT

5. According to article 44, paragraph 3, of the Convention, when a State Party has submitted a comprehensive Initial Report to the committee or has previously provided detailed information to the Committee, it need not repeat such information in its subsequent reports. It should, however, clearly make reference to the information previously transmitted and indicate any changes that have occurred during the reporting period.

6. Information provided in States Parties' reports on each cluster identified by the Committee should follow the present guidelines and in particular the annex, with regard to form and content. In this regard States Parties should provide information for each cluster, or where appropriate for individual articles where relevant, on:

(a) Follow-up: The first paragraph on each cluster should systematically include information on concrete measures taken with regard to the concluding observations adopted by the Committee in relation to the previous report;

(b) Comprehensive national programmes – monitoring: The subsequent paragraphs should contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concern-

ed as well as the mechanisms established within the Government to monitor progress. States Parties shall provide relevant information, including on the principal legislative, judicial, administrative or other measures in force or foreseen. This section should not be confined to merely listing measures adopted in the country in recent years, but should provide clear information on the goals and timetables of those measures and how they have had an impact on the actual economic, political and social realities and general conditions existing in the country;

(c) Allocation of budgetary and other resources: States Parties shall provide information on the amount and percentage of the national budget (at central and local levels) devoted annually to children, including, where appropriate, the percentage of external financing (through donors, international financial institutions and private banking) of the national budget, with respect to relevant programmes under each cluster. In this regard, where appropriate, States Parties should provide information on poverty reduction strategies and programmes and other factors which impact or may impact on the implementation of the Convention;

(d) Statistical data: States Parties should provide, where appropriate, annual statistical data disaggregated by age/age group, gender, urban/rural area, membership of a minority and/or indigenous group, ethnicity, disability, religion, or other category as appropriate;

(e) Factors and difficulties: The last paragraph should describe any factors and difficulties, if any, affecting the fulfilment of

the obligations of States Parties' obligations for the cluster concerned, as well as information on the targets set for the future.

7. Reports should be accompanied by copies of the principal legislative texts and judicial decisions, as well as detailed disaggregated data, statistical information, indicators referred to therein and relevant research. The data should be disaggregated as described above and changes that have occurred since the previous report should be indicated. This material will be made available to the members of the Committee. It should be noted, however, that for reasons of economy, these documents will not be translated or reproduced for general distribution. It is therefore desirable that when a text is not actually quoted in or annexed to the report itself, the report should contain sufficient information to be clearly understood without reference to those texts.

8. The Committee requests that the report includes a table of contents and numbered sequentially through to the end and that it be printed on A4-sized paper, in order to facilitate distribution of the report and thus its availability for consideration by the Committee.

SECTION II: SUBSTANTIVE INFORMATION TO BE CONTAINED IN THE REPORT

I. GENERAL MEASURES OF IMPLEMENTATION (arts. 4, 42 and 44, para. 6, of the Convention)

9. Under this cluster, States Parties are requested to follow the provisions in paragraphs 5 and 6 above, General Comment No. 2 (2002) on the role of independent national human rights institutions and General Comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child.

10. States Parties that have entered reservations to the Convention should indicate whether they consider it necessary to maintain them. They should also indicate whether they have plans to limit the effects of reservations and ultimately to withdraw them, and, whenever possible, specify the timetable for doing so.

11. States Parties are requested to provide relevant information pursuant to article 4 of the Convention, including information on the measures adopted to bring domestic legislation and practice into full conformity with the principles and provisions of the Convention.

12. (a) States Parties that provide international assistance or development aid should provide information on human and financial resources allocated to programmes for children, in particular within bilateral assistance programmes;

(b) States Parties receiving international assistance or development aid should provide information on the total resources received and the percentage allocated to programmes for children.

13. Recognizing that the Convention represents a minimum standard for children's rights, and in the light of article 41, States Parties should describe any provisions of the domestic legislation that are more conducive to the realization of the rights of the child as enshrined in the Convention.

14. States Parties should provide information on remedies available and their accessibility to children, in cases of violation of the rights recognized by the Convention, as well as information on existing mechanisms at national or local level for coordinating policies relating to children and for monitoring the implementation of the Convention.

15. States Parties should indicate whether there is an independent national human rights institution and describe the process of appointing its members and explain its mandate and role with regard to the promotion and protection of children's rights as outlined in the Committee's General Comment No. 2 (2002). Also indicate how this national human rights institution is financed.

16. States Parties should describe the measures that have been taken or are foreseen, pursuant to article 42 of the Convention, to make the principles and provisions of the Convention widely known to adults and children alike.

17. States Parties should also describe the measures undertaken or foreseen, pursuant to article 44, paragraph 6, to make their reports widely available to the public at large in their own countries. These measures should also include, when appropriate, the translation of the concluding observations of the Committee adopted after the consideration of the previous report into official and minority languages and their wide dissemination, including through the print and electronic media.

18. States Parties should provide information on cooperation with civil society organizations, including non-governmental organizations and children's and youth groups, with regard to implementation of all aspects of the Convention. In addition, please describe the manner in which the present report was prepared and the extent to which non-governmental organizations (NGOs), youth groups and others were consulted.

II. DEFINITION OF THE CHILD (art. 1)

19. States Parties are also requested to provide updated information with respect to article 1 of the Convention, concerning the definition of a child under their domestic laws and regulations, specifying any differences between girls and boys.

III. GENERAL PRINCIPLES (arts. 2, 3, 6 and 12)

20. Under this cluster, States Parties are requested to follow the provisions in paragraphs 5 and 6, above.

21. States Parties should provide relevant information in respect of:

- (a) Non-discrimination (art. 2);
- (b) Best interests of the child (art. 3);
- (c) The right to life, survival and development (art. 6);
- (d) Respect for the views of the child (art. 12).

22. Reference should also be made to the implementation of these rights in relation to children belonging to the most disadvantaged groups.

23. With regard to article 2, information should also be provided on the measures taken to protect children from xenophobia and other related forms of intolerance. With regard to article 6, information should also be provided on the measures taken to ensure that persons under 18 are not subject to the death penalty; that the deaths of children are registered, and, where appropriate, investigated and reported, as well as on the measures adopted to prevent suicide among children and to monitor its incidence; and to ensure the survival of children at all ages, in particular adolescents, and that maximum efforts are made to ensure the minimization of risks to which that group may be exposed particularly (for example, sexually transmitted diseases or street violence).

IV. CIVIL RIGHTS AND FREEDOMS (arts. 7, 8, 13-17 and 37 (a))

24. Under this cluster, States Parties are requested to follow the provisions in paragraphs 5 and 6, above.

25. States Parties should provide relevant information in respect of:

- (a) Name and nationality (art. 7);
- (b) Preservation of identity (art. 8);
- (c) Freedom of expression (art. 13);
- (d) Freedom of thought, conscience and religion (art. 14);
- (e) Freedom of association and of peaceful assembly (art. 15);
- (f) Protection of privacy (art. 16);
- (g) Access to appropriate information (art. 17);
- (h) The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, including corporal punishment (art. 37 (a)).

26. States Parties should refer, *inter alia*, to children with disabilities, children living in poverty, children born out of wedlock, asylum-seeking and refugee children and children belonging to indigenous and/or minority groups.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

(arts. 5, 9-11, 18, paras. 1 and 2; 19-21, 25, 27, para. 4 and 39)

27. Under this cluster, States Parties are requested to follow the provisions in paragraphs 5 and 6, above.

28. States Parties should provide relevant information, including the principal legislative, judicial, administrative or other measures in force, particularly on how the principles of the "best interests of the child" (art. 3) and "respect for the views of the child" (art. 12) are reflected in addressing the questions of:

- (a) Parental guidance (art. 5);
- (b) Parental responsibilities (art. 18, paras. 1 and 2);
- (c) Separation from parents (art. 9);
- (d) Family reunification (art. 10);
- (e) Recovery of maintenance for the child (art. 27, para. 4);

- (f) Children deprived of a family environment (art. 20);
- (g) Adoption (art. 21);
- (h) Illicit transfer and non-return (art. 11);
- (i) Abuse and neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39);
- (j) Periodic review of placement (art. 25).

29. The report should also provide information on any relevant bilateral or multilateral agreements, treaties or conventions concluded by the State Party or to which it may have acceded, particularly with regard to articles 11, 18 or 21, and their impact.

VI. BASIC HEALTH AND WELFARE (arts. 6, 18, para. 3, 23, 24, 26, and 27, paras. 1-3)

30. Under this cluster, States Parties are requested to follow the provisions in paragraphs 5 and 6 above, and General Comment No. 3 (2003) on HIV/AIDS and the rights of the child and General Comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child.

31. States Parties should provide relevant information in respect of:

- (a) Survival and development (art. 6, para. 2);
- (b) Children with disabilities (art. 23);
- (c) Health and health services (art. 24);
- (d) Social security and childcare services and facilities (arts. 26 and 18, para. 3);
- (e) Standard of living (art. 27, paras. 1-3).

32. With regard to article 24, the report should contain information on measures and policies for the implementation of the right to health, including efforts to combat diseases such as HIV/AIDS (see General Comment No. 3 (2003)), malaria and tuberculosis particularly among special groups of children at high risk. In the light of General Comment No. 4 (2003), information on the measures undertaken to promote and protect the rights of young people in the context of adolescent health should also be included. Further, the report should also indicate the legal measures promulgated to prohibit all forms of harmful traditional practices, including female genital mutilation, and to promote awareness-raising activities to sensitize all concerned Parties, including community and religious leaders, on the harmful aspects of these practices.

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES (arts. 28, 29 and 31)

33. Under this cluster, States Parties are requested to follow the provisions in paragraphs 5 and 6 above, and General Comment No. 1 (2001) on the aims of education.

34. States Parties should provide relevant information in respect of:

- (a) Education, including vocational training and guidance (art. 28);
- (b) Aims of education (art. 29) with reference also to quality of education;
- (c) Rest, leisure, recreation and cultural and artistic activities (art. 31).

35. With regard to article 28, reports should also provide information on any category or group of children who do not enjoy the right to education (either due

to lack of access or because they have left or been excluded from school) and the circumstances in which children may be excluded from school temporarily or permanently (for example, disability, deprivation of liberty, pregnancy, or HIV/AIDS infection), including any arrangements made to address such situations and to provide alternative education.

36. States Parties should specify the nature and extent of cooperation with local and national organizations of a governmental or non-governmental nature, such as teachers' associations, concerning the implementation of this part of the Convention.

VIII. SPECIAL PROTECTION MEASURES (arts. 22, 30, 32-36, 37 (b)-(d), 38, 39 and 40)

37. Under this cluster, States Parties are requested to follow the provisions in paragraphs 5 and 6 above, and General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin.

38. States Parties are requested to provide relevant information on measures taken to protect:

- (a) Children in situations of emergency:
 - (i) Refugee children (art. 22);
 - (ii) Children in armed conflicts (art. 38), including physical and psychological recovery and social reintegration (art. 39);
 - (b) Children in conflict with the law:
 - (i) The administration of juvenile justice (art. 40);
 - (ii) Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (art. 37 (b), (c) and (d));
 - (iii) The sentencing of juveniles, in particular the prohibition of capital punishment and life imprisonment (art. 37 (a));
 - (iv) Physical and psychological recovery and social reintegration (art. 39);
 - (c) Children in situations of exploitation, including physical and psychological recovery and social reintegration (art. 39):
 - (i) Economic exploitation, including child labour (art. 32);
 - (ii) Drug abuse (art. 33);
 - (iii) Sexual exploitation and sexual abuse (art. 34);
 - (iv) Other forms of exploitation (art. 36);
 - (v) Sale, trafficking and abduction (art. 35);
 - (d) Children belonging to a minority or an indigenous group (art. 30);
 - (e) Children living or working on the street.

39. In relation to article 22, reports should also provide information on the international conventions and other relevant instruments to which the State is party, including those relating to international refugee law, as well as relevant indicators identified and used; relevant programmes of technical cooperation and international assistance, as well as information on infringements that have been observed by inspectors and sanctions applied.

40. Reports should further describe the training activities developed for all professionals involved with the system of juvenile justice, including judges and magistrates, prosecutors, lawyers, law enforcement offi-

cial, immigration officers and social workers, on the provisions of the Convention and other relevant international instruments in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (General Assembly resolution 40/33), the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (General Assembly resolution 45/112) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113).

41. With regard to article 32, reports should also provide information on the international conventions and other relevant instruments to which the State is party, including in the framework of the International Labour Organization, as well as relevant indicators identified and used; relevant programmes of technical cooperation and international assistance developed, as well as information on infringements that have been observed by inspectors and sanctions applied.

IX. OPTIONAL PROTOCOLS TO THE CONVENTION ON THE RIGHTS OF THE CHILD

42. States Parties that have ratified one or both Optional Protocols to the Convention on the Rights of the Child - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography - should, after they have submitted their initial report for each of the two Optional Protocols (see respective guidelines, CRC/OP/AC/1 and CRC/OP/SA/1), provide detailed information about measures taken with regard to the recommendations made by the Committee in its concluding observations on the last report submitted to the Committee.

ANNEX

Annex to the General Guidelines regarding the form and contents of Periodic Reports to be submitted by States Parties under article 44, paragraph 1 (b), of the Convention

INTRODUCTION

1. In preparing their periodic reports States Parties should follow the General Guidelines regarding the form and content and include, as requested by the present annex, where appropriate, information and disaggregated statistical data and other indicators. In the present annex, references to disaggregated data include indicators such as age and/or age group, gender, location in rural/urban area, membership of minority and/or indigenous group, ethnicity, religion, disability or any other category considered appropriate.

2. Information and disaggregated data provided by States Parties should cover the reporting period since the consideration of their last report. They should also

explain or comment on significant changes that have taken place over the reporting period.

I. GENERAL MEASURES OF IMPLEMENTATION

(arts. 4, 42 and 44, para. 6)

3. States Parties should provide statistical data on training provided on the Convention for professionals working with and for children, including, but not limited to:

- (a) Judicial personnel, including judges and magistrates;
- (b) Law enforcement personnel;
- (c) Teachers;
- (d) Health care personnel;
- (e) Social workers.

II. DEFINITION OF THE CHILD (art. 1)

4. States Parties should provide disaggregated data as described in paragraph 1 above, on the number and proportion of children under 18 living in the State Party.

III. GENERAL PRINCIPLES

(arts. 2, 3, 6 and 12)

Right to life, survival and development (art. 6)

5. It is recommended that States Parties provide data disaggregated as described in paragraph 1 above, on the death of those under 18:

- (a) As a result of extrajudicial, summary or arbitrary executions;
- (b) As a result of capital punishment;
- (c) Due to illnesses, including HIV/AIDS, malaria, tuberculosis, polio, hepatitis and acute respiratory infections;
- (d) As a result of traffic or other accidents;
- (e) As the result of crime and other forms of violence;
- (f) Due to suicide.

Respect for the views of the child (art. 12)

6. States Parties should provide data on the number of child and youth organizations or associations and the number of members that they represent.

7. States Parties should provide data on the number of schools with independent student councils.

IV. CIVIL RIGHTS AND FREEDOMS

(arts. 7, 8, 13-17 and 37 (a))

Birth registration (art. 7)

8. Information should be provided on the number and percentage of children who are registered after birth, and when such registration takes place.

Access to appropriate information (art. 17)

9. The report should contain statistics on the number of libraries accessible to children, including mobile libraries.

The right not to be subjected to torture or other cruel inhuman or degrading treatment or punishment (art. 37 (a))

10. States Parties should provide data disaggregated as described in paragraph 1 above, and type of violation, on the:

- (a) Number of children reported as victims of torture;
- (b) Number of children reported as victims of other cruel, inhuman or degrading treatment or other forms of punishment, including forced marriage and female genital mutilation;
- (c) Number and percentage of reported violations under both (a) and (b) which have resulted in either a court decision or other types of follow-up;
- (d) Number and percentage of children who received special care in terms of recovery and social reintegration;
- (e) Number of programmes implemented for the prevention of institutional violence and amount of training provided to staff of institutions on this issue.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

Family support

(arts. 5 and 18, paras. 1 and 2)

11. States Parties should provide data disaggregated as described in paragraph 1, above, on the:

- (a) Number of services and programmes aimed at rendering appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and the number and percentage of children and families that benefit from these services and programmes;
- (b) Number of available childcare services and facilities and the percentage of children and families that have access to these services.

Children without parental care (arts. 9, paras. 1-4, 21 and 25)

12. With reference to children separated from parents, States Parties should provide data disaggregated as described in paragraph 1, above, on the:

- (a) Number of children without parental care disaggregated by causes (i.e. due to armed conflict, poverty, abandonment as a result of discrimination, etc.);
- (b) Number of children separated from their parents as a result of court decisions (*inter alia*, in relation to situations of detention, imprisonment, exile or deportation);
- (c) Number of institutions for these children disaggregated by region, number of places available in these institutions, ratio of caregivers to children and number of foster homes;
- (d) Number and percentage of children separated from their parents who are living in institutions or with foster families as well as the duration of placement and frequency of its review;
- (e) Number and percentage of children reunited with their parents after a placement;
- (f) Number of children in domestic (formal and informal) and intercountry adoption programmes disaggregated by age and with information on the country of origin and of adoption for the children concerned.

Family reunification (art. 10)

13. States Parties should provide data disaggregated by gender, age, national and ethnic origin on the number of children who

entered or left the country for the purpose of family reunification, including the number of unaccompanied refugee and asylum-seeking children.

Illicit transfer and non-return

(art. 11)

14. States Parties should provide data disaggregated as described in paragraph 1, above, as well as by national origin, place of residence, family status on the:

- (a) Number of children abducted from and to the State Party;
- (b) Number of perpetrators arrested and percentage of those that were sanctioned in (criminal) courts.

Information on the relationship between the child and the perpetrator of the illicit transfer should also be included.

Abuse and neglect (art. 19), Including physical and psychological recovery and social reintegration

(art. 39)

15. States Parties should provide data disaggregated as described in paragraph 1, above, on the:

- (a) Number and percentage of children reported as victims of abuse and/or neglect by parents or other relatives/caregivers;
- (b) Number and percentage of those cases reported that resulted in sanctions or other forms of follow-up for perpetrators;
- (c) Number and percentage of children who received special care in terms of recovery and social reintegration.

VI. BASIC HEALTH AND WELFARE

Children with disabilities (art. 23)

16. States Parties should specify the number and percentage of children with disabilities disaggregated as described in paragraph 1, above, as well as by nature of disability:

- (a) Whose parents receive special material or other assistance;
- (b) Who are living in institutions, including institutions for mental illnesses, or outside their families, such as in foster care;
- (c) Who are attending regular schools;
- (d) Who are attending special schools.

Health and health services

(art. 24)

17. States Parties should provide data disaggregated as described in paragraph 1, above, on the:

- (a) Rates of infant and under-five child mortality;
- (b) Proportion of children with low birth weight;
- (c) Proportion of children with moderate and severe underweight, wasting and stunting;
- (d) Percentage of households without access to hygienic sanitation facilities and access to safe drinking water;
- (e) Percentage of one-year-olds fully immunized for tuberculosis, diphtheria, pertussis, tetanus, polio and measles;
- (f) Rates of maternal mortality, including its main causes;
- (g) Proportion of pregnant women who have access to, and benefit from, prenatal and post-natal health care;
- (h) Proportion of children born in hospitals;

(i) Proportion of personnel trained in hospital care and delivery;

(j) Proportion of mothers who practice exclusive breastfeeding and for how long.

18. States Parties should provide data disaggregated as described in paragraph 1, above, on the:

(a) Number/percentage of children infected by HIV/AIDS;

(b) Number/percentage of children who receive assistance including medical treatment, counselling, care and support;

(c) Number/percentage of these children living with relatives, in foster care, in institutions, or on the streets;

(d) Number of child-headed households as a result of HIV/AIDS.

19. Data should be provided with regard to adolescent health on:

(a) The number of adolescents affected by early pregnancy, sexually transmitted infections, mental health problems, drug and alcohol abuse, disaggregated as described in paragraph 1, above;

(b) Number of programmes and services aimed at the prevention and treatment of adolescent health concerns.

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

Education, including vocational training (art. 28)

20. Data disaggregated as described in paragraph 1, above, should be provided in respect of:

(a) Literacy rates of children and adults;

(b) Enrolment and attendance rates for primary and secondary schools and vocational training centres;

(c) Retention rates and percentage of dropout for primary and secondary schools and vocational training centres;

(d) Average teacher/pupil ratio, with an indication of any significant regional or rural/urban disparities;

(e) Percentage of children in the non-formal education system;

(f) Percentage of children who attend pre-school education.

VIII. SPECIAL PROTECTION MEASURES

Refugee children (art. 22)

21. States Parties should provide data disaggregated as described in paragraph 1, above, as well as country of origin, nationality and accompanied or unaccompanied status on the:

(a) Number of internally displaced, asylum-seeking, unaccompanied and refugee children;

(b) Number and percentage of such children attending school and covered by health services.

Children in armed conflicts (art. 38), Including physical and psychological recovery and social reintegration (art. 39)

22. States Parties should provide data disaggregated as described in paragraph 1, above, on the:

(a) Number and percentage of persons under 18 who are recruited or enlist voluntarily in the armed forces and proportion of those who participate in hostilities;

(b) Number and percentage of children who have been demobilized and reintegrated into their communities; with the proportion of those who have returned to school and been reunified with their families;

(c) Number and percentage of child casualties due to armed conflict;

(d) Number of children who receive humanitarian assistance;

(e) Number of children who receive medical and/or psychological treatment as a consequence of armed conflict.

The administration of juvenile justice (art. 40)

23. States Parties should provide appropriate disaggregated data (as described in paragraph 1, above, including by type of crime) on the:

(a) Number of persons under 18 who have been arrested by the police due to an alleged conflict with the law;

(b) Percentage of cases where legal or other assistance has been provided;

(c) Number and percentage of persons under 18 who have been found guilty of an offence by a court and have received suspended sentences or have received punishment other than deprivation of liberty;

(d) Number of persons under 18 participating in probation programmes of special rehabilitation;

(e) Percentage of recidivism cases.

Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (art. 37 (b)-(d))

24. States Parties should provide appropriate disaggregated data (as described in paragraph 1, above, including by social status, origin and type of crime) on children in conflict with the law in respect of the:

(a) Number of persons under 18 held in police stations or pre-trial detention after having been accused of committing a crime reported to the police, and the average length of their detention;

(b) Number of institutions specifically for persons under 18 alleged as, accused of, or recognized as having infringed the penal law;

(c) Number of persons under 18 in these institutions and average length of stay;

(d) Number of persons under 18 detained in institutions that are not specifically for children;

(e) Number and percentage of persons under 18 who have been found guilty of an offence by a court and have been sentenced to detention and the average length of their detention;

(f) Number of reported cases of abuse and maltreatment of persons under 18 occurring during their arrest and detention/imprisonment.

Economic exploitation of children, including child labour (art. 32)

25. With reference to special protection measures, States Parties should provide statistical disaggregated data as described in paragraph 1, above, on the:

(a) Number and percentage of children below the minimum age of employment who are involved in child labour as defined by the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182) of the International Labour Organization disaggregated by type of employment;

(b) Number and percentage of those children with access to recovery and reintegration assistance, including free basic education and/or vocational training.

Drug and substance abuse (art. 33)

26. Information is to be provided on:

(a) The number of child victims of substance abuse;

(b) The number that are receiving treatment, assistance and recovery services.

Sexual exploitation, abuse and trafficking (art. 34)

27. States Parties should provide data disaggregated as described in paragraph 1, above, as well as by types of violation reported on the:

(a) Number of children involved in sexual exploitation, including prostitution, pornography and trafficking;

(b) Number of children involved in sexual exploitation, including prostitution, pornography and trafficking, who were provided access to rehabilitation programmes;

(c) Number of cases of commercial sexual exploitation, sexual abuse, sale of children, abduction of children and violence against children reported during the reporting period;

(d) Number and percentage of those that have resulted in sanctions, with information on the country of origin of the perpetrator and the nature of the penalties imposed;

(e) Number of children trafficked for other purposes, including labour;

(f) Number of border and law enforcement officials who have received training, with a view to preventing trafficking of children and to respect their dignity.

Guidelines regarding initial reports to be submitted by States Parties under article 8 (1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Adopted by the Committee at its 736th meeting (twenty-eighth session) on 3 October 2001

Introduction

Pursuant to article 8, paragraph 1 of the Optional Protocol, States Parties shall, within two years following the entry into force of this Protocol for the State Party concerned, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Optional Protocol. Thereafter, pursuant to article 8, paragraph 2 of the Optional Protocol, States Parties shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44, paragraph 1(b) of the Convention any further information with respect to the implementation of the Optional Protocol. States Parties to the Convention, who are not parties to the Optional Protocol, shall submit a report every five years, after the submission of the comprehensive report.

The Committee may, in the light of article 8, paragraph 3 of the Optional Protocol, request from States Parties further information relevant to the implementation of the Optional Protocol.

Reports should provide information on the measures adopted by the State Party to give effect to the rights set forth in the Optional Protocol and on the progress made in the enjoyment of those rights and should indicate the factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the Optional Protocol.

Copies of the principal legislative texts and judicial decisions, administrative and other relevant instructions to the armed forces, both of a civil and military character, as well as detailed statistical information,

indicators referred therein and relevant research should accompany reports. In reporting to the Committee, States Parties should indicate how the implementation of the Optional Protocol is in line with the general principles of the Convention on the Rights of the Child, namely non-discrimination, best interests of the child, right to life, survival and development, and respect for the views of the child. Moreover, the process of preparation of the report should be described to the Committee, including the involvement of governmental and non-governmental organizations/bodies in its drafting and dissemination. Finally, reports should indicate the date of reference used when determining whether or not a person is within an age limit (for instance, the date of birth of the person concerned or the first day of the year during which the person concerned reaches that age limit).

● Article 1

Please provide information on all measures taken, including of a legislative, administrative or other nature, to ensure that members of the armed forces who have not attained the age of 18 years do not take a direct part in hostilities. In this respect, please provide information notably on:

The meaning of “direct participation” in the legislation and practice of the State concerned;

The measures taken to avoid that a member of the armed forces who has not attained the age of 18 years is deployed or maintained in an area where hostilities are taking place and the obstacles encountered in applying these measures;

When relevant, disaggregated data on members of the armed forces below the age of

18 years who were made prisoners, whereas they did not directly participate in hostilities;

● Article 2

Please indicate all the measures taken including of a legislative, administrative or other nature, to ensure that persons who have not attained the age 18 years are not compulsorily recruited into the armed forces. In this regard, reports should indicate among others:

Detailed information on the process of compulsory recruitment (i.e. from registration up to the physical integration into the armed forces) indicating the minimum age linked to each step and, at what time in that process, recruits become members of the armed forces;

The reliable documents to verify age, which are required prior to acceptance into compulsory military service (birth certificate, affidavit, etc.);

Any legal provision enabling the age of conscription to be lowered in exceptional circumstances (e.g. state of emergency). In this respect, please provide information on the age it can be lowered to, the process and the conditions for that change.

For States Parties where compulsory military service has been suspended but not abolished, the minimum age of recruitment set up in the previous regime and how, and under what conditions, this previous system can be reinstalled.

● Article 3, para. 1

Reports should notably indicate:

The minimum age set out for voluntary recruitment into the armed forces, in accordance with the declaration submitted upon

ratification or accession or any change thereafter;

When relevant, disaggregated data on children below the age of 18 years voluntarily recruited into the national armed forces (for example, by gender, age, region, rural/urban areas and social and ethnic origin, and military ranks);

When relevant, pursuant to article 38, paragraph 3 of the Convention on the Rights of the Child, the measures taken to ensure that in recruiting those persons who have attained the minimum age set out for voluntary recruitment but who have not attained the age of 18 years, priority is given to those who are the oldest. In this respect, please provide information on the measures of special protection adopted for the under-18-years-old recruits.

● **Article 3, paras. 2 and 4**

Reports should notably provide information on:

The debate which has taken place in the State concerned prior to the adoption of the binding declaration and the people involved in that debate;

When relevant, the national [or regional, local, etc.] debates, initiatives or any campaign aiming at strengthening the declaration if it set out a minimum age lower than 18 years.

● **Article 3, para. 3**

With regard to the minimum safeguards that States Parties shall maintain concerning voluntary recruitment, reports should provide information on the implementation of these safeguards and indicate among others:

A detailed description of the procedure used for such recruitment from the expression of intention to volunteer until the physical integration into the armed forces;

Medical examination foreseen before recruitment of volunteers;

The reliable documentation used to verify the age of the volunteers (birth certificate, affidavit, etc.);

Information that is made available to the volunteers, and to their parents or legal guardians allowing them to formulate their own opinion and to make them aware of the duties involved in the military service. A copy of any materials used for this information to be annexed to the report;

The effective minimum service time and the conditions for early discharge; the use of military justice or discipline to under-18-years recruits and disaggregated data on the number of such recruits under-trial or in detention; the minimum and maximum sanctions foreseen in case of desertion;

The incentives used by the national armed forces for encouraging volunteers to join the ranks (scholarships, advertising, meetings at schools, games, etc.).

● **Article 3, para. 5**

Reports should indicate, among others, information on:

The minimum age of entry into schools operated by or under the control of the armed forces;

Disaggregated data on schools operated by or

under the control of the armed forces, including numbers, type of education provided, proportion between academic education and military training in the curricula; length of this education; academic/military personnel involved, educational facilities, etc.;

The inclusion in the school curricula of human rights and humanitarian principles, including in areas relevant to the realization of the rights of the child;

Disaggregated data on the students in these schools (for example, by gender, age, region, rural/urban areas and social and ethnic origin); their status (members or not of the armed forces); their military status in the case of a mobilisation or of an armed conflict, a genuine military need or any other emergency situation; their right to leave such schools at any time and not to pursue a military career;

All appropriate measures taken, to ensure that school discipline is administered in a manner consistent with the child's human dignity and any complaint mechanisms available in this regard.

● **Article 4**

Please provide information on, *inter alia*:

The armed groups operating on/from the territory of the State concerned or with sanctuary on that territory;

Update on the status of the negotiations of the State Party with armed groups;

Disaggregated data on children who have been recruited and used in hostilities by the armed groups, and on those who have been arrested by the State concerned (for example, by gender, age, region, rural/urban areas and social and ethnic origin, time spent in the armed groups, and time spent in hostilities);

Any written or oral commitment made by armed groups aiming at not recruiting and using children below the age of 18 years in hostilities;

Measures adopted by the state concerned aiming at raising awareness amongst armed groups and within the communities of the need to prevent recruitment of children below the age of 18 years and of their legal duties with regard to the minimum age set up in the Optional Protocol for recruitment and use in hostilities;

The adoption of legal measures which aim at prohibiting and criminalizing the recruitment and use in hostilities of children under the age of 18 years by such armed groups and the judicial decisions applying to this issue;

The programmes to prevent notably children who are at highest risk of recruitment or use by such armed groups, such as refugee and internally displaced children, street children, orphans (e.g. birth registration campaigns) from being recruited or used by armed groups.

● **Article 5**

Please indicate any provision of the national legislation and of international instruments and international humanitarian law applicable in the State concerned, which are more conducive to the realization of the rights of the child. Reports should also provide infor-

mation on the status of ratification by the State concerned of the main international instruments concerning children in armed conflict and on other commitments undertaken by that State concerning this issue.

● **Article 6, paras. 1 and 2**

Please indicate the measures adopted to ensure the effective implementation and enforcement of the provisions of the Optional Protocol within the jurisdiction of the State Party, including information on:

Any review of domestic legislation and amendments introduced into it;

The legal status of the Optional Protocol in national law and its applicability before domestic jurisdictions, as well as, when relevant, the intention of the State Party to withdraw existing reservations made to this Protocol;

The competent governmental departments or bodies responsible for the implementation of the Optional protocol and their coordination with regional and local authorities as well as with civil society;

The mechanisms and means used for monitoring and periodically evaluating the implementation of the Optional Protocol;

Measures adopted to ensure the relevant training of peacekeeping personnel on the rights of the child, including the provisions of the Optional Protocol;

The dissemination in all relevant languages of the Optional Protocol to all children and adults, notably those responsible for military recruitment, and the appropriate training offered to all professional groups working with and for children.

● **Article 6, para. 3**

When relevant, please indicate all measures adopted with regard to disarmament, demobilization (or release from service) and to the provision of appropriate assistance for the physical and psychological recovery and social reintegration of children, taking due account of the specific situation of girls, including information on:


Disaggregated data on children involved in that proceeding, on their participation in such programmes, and on their status with regard to the armed forces and armed groups (e.g. when do they stop to be members of the armed forces or groups?);

The budget allocated to these programmes, the personnel involved and their training, the organizations concerned, cooperation among them, and participation of civil society, local communities, families, etc.;

The various measures adopted to ensure the social reintegration of children, e.g. interim care, access to education and vocational training, reintegration in the family and community, relevant judicial measures, while taking into account the specific needs of children concerned depending notably on their age and sex.

The measures adopted to ensure confidentiality and protection of children involved in such programmes from media exposure and exploitation;

The legal provisions adopted criminalizing the recruitment of children and the inclusion of that crime in the competence of any



specific justice seeking mechanisms established in the context of conflict (e.g. war crimes tribunal, truth and reconciliation bodies). The safeguards adopted to ensure that the rights of the child as a victim and as a witness are respected in these mechanisms in light of the Convention on the Rights of the Child;

The criminal liability of children for crimes they may have committed during their stay with armed forces or groups and the judicial

procedure applicable, as well as safeguards to ensure that the rights of the child are respected;

When relevant, the provisions of peace agreements dealing with the disarmament, demobilization and/or physical and psychological recovery and social reintegration of child combatants.

● **Article 7**

Reports should provide information on cooperation in the implementation of the

Optional Protocol, including through technical cooperation and financial assistance. In this regard, reports should provide information, *inter alia*, on the extent of the technical cooperation or financial assistance, which the State Party has requested or offered. Please indicate, if the State Party is in a position of providing financial assistance, the existing multilateral, bilateral or other programs that have been undertaken for that assistance.

Revised Guidelines regarding initial reports to be submitted by States Parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Adopted by the Committee at its forty-third session, on 29 September 2006

Introduction

Pursuant to article 12, paragraph 1, of the Optional Protocol, each State party shall, within two years following the entry into force of the Protocol for that State party, submit a report to the Committee on the Rights of the Child (“the Committee”) containing comprehensive information on the measures it has taken to implement the provisions of the Protocol. Thereafter, pursuant to article 12, paragraph 2, of the Protocol, States parties having submitted their initial report under this Protocol shall include in the reports they submit to the Committee in accordance with article 44, paragraph 1 (b), of the Convention any further information with respect to the implementation of the Optional Protocol. States parties to the Optional Protocol that are not parties to the Convention shall submit a report within two years following the entry into force of the Protocol and then every five years.

Guidelines regarding initial reports to be submitted by States parties under article 12, paragraph 1, of the Optional Protocol were adopted by the Committee at its 777th meeting, on 1 February 2002. The process of reviewing the reports received has led the Committee to adopt revised guidelines, in order to assist the States parties that have not yet reported to better understand the kind of information and data it considers necessary to understand and evaluate the progress made by States parties in implementing their obligations and to enable it to provide them with appropriate observations and recommendations.

The revised guidelines are divided into eight sections. Section I contains general guidel-

lines about the reporting process, section II concerns data and section III concerns general measures of implementation relevant to this Protocol. Sections IV to VIII concern the substantive obligations recognized by the Protocol: section IV concerns the prevention of the sale of children, child prostitution and child pornography; section V concerns the criminalization of these practices and related matters; section VI concerns protection of the rights of child victims; section VII concerns international assistance and cooperation; and section VIII concerns other relevant provisions of national or international law.

The Committee particularly wants to draw attention of the States parties to the annex to these guidelines, which provides additional guidance on some issues and further indications as to the information needed for a comprehensive report of the States parties on the implementation of this Protocol.

I. GENERAL GUIDELINES

1. Reports submitted pursuant to article 12, paragraph 1, of the Protocol should contain a description of the process of preparation of the report, including the contributions made by governmental and non-governmental organizations/bodies in its drafting and dissemination. Reports of federal States and States having dependent territories or autonomous regional governments, should contain summarized and analytical information on how they contributed to the report.

2. Reports should indicate how the general principles of the Convention, namely non-discrimination, the primacy of best inte-

rests of the child, the rights to life, survival and development, and respect for the views of the child, have been taken into account in the design and implementation of the measures adopted by the State party under the Protocol (see annex).

3. Since the Protocol is intended to further implementation of the Convention on the Rights of the Child, in particular articles 1, 11, 21, 32, 34, 35 and 36, reports submitted pursuant to article 12 of the Protocol should indicate how and to what extent the measures taken in order to implement the Protocol have contributed to the implementation of the Convention, in particular the articles listed above.

4. Reports should contain information on the legal status of the Protocol in the internal law of the State party, and its applicability in all relevant domestic jurisdictions.

5. States parties also are invited to include in the reports, when relevant, information about the intention of the State party to withdraw any reservation(s) it has made to the Protocol.

6. Reports should include, in addition to information on the measures taken to implement the Protocol:

(a) Information, including relevant quantifiable data where available, on the progress made in eliminating the sale of children, child prostitution and child pornography and in ensuring the protection and enjoyment of the rights set forth in the Protocol; (b) An analysis of the factors and difficulties, if any, affecting the degree of fulfillment of the obligations under the Protocol; and

(c) Information from all autonomous regions or territories in the State party in a

summarized version (full texts of the information concerning such entities may be annexed to the report).

7. Reports should accurately describe the implementation of the Protocol with regard to all territories and persons over which the State party exercises jurisdiction, including all parts of federal States, dependent or autonomous territories, all military forces of the State party and all locations where such forces exercise de facto effective control.

8. States parties are invited to submit, together with their reports under article 12, copies of the principal legislative, administrative and other relevant texts, judicial decisions and relevant studies or reports.

II. DATA

9. Data included in the reports submitted pursuant to article 12 of the Protocol should be disaggregated, to the extent possible, by sex, region, age and by nationality and ethnicity, if relevant, and any other criteria that the State party considers relevant and that would help the Committee come to a more accurate understanding of the progress made in implementing the Protocol and any remaining gaps or challenges. The report should also contain information on the mechanisms and procedures used to collect these data.

10. Reports should summarize available data on the incidence of sale of children in the State party, including:

(a) The sale or transfer of children for purposes of sexual exploitation;

(b) The transfer of the organs of children for profit;

(c) The engagement of children in forced labour (see annex);

(d) The number of children adopted through the efforts of intermediaries using methods incompatible with article 21 of the Convention or other applicable international standards;

(e) Any other form of sale of children that occurs within the State party, including any traditional practices that involve the transfer of a child by any person or group of persons to another for any form of consideration, and any available indicators of the number of children affected by such practices;

(f) The number of child victims of trafficking - whether within the territory of the State party, from the territory of the State party to other States or from other States to the territory of the State party - including information as to the type of exploitation for which such children are trafficked (see annex); and

(g) The data provided should also show increase or decrease in these practices over time, when possible.

11. Reports should summarize available data concerning child prostitution, including:

(a) The number of persons under the age of 18 engaged in prostitution in the State party;

(b) The increase or decrease of child prostitution or any specific forms of child prostitution over time (see annex); and

(c) The extent to which child prostitution is linked to sex tourism within the territory of the State party, or the State party has

detected within its territory efforts to promote sex tourism involving child prostitution in other countries.

12. Reports should summarize available information concerning the extent to which pornography featuring persons actually or apparently under the age of 18, is produced, imported, distributed or consumed within the territory of the State party and any increases or decreases in the production, importation, distribution or consumption of child pornography that have been measured or detected, including:

(a) Photographs and other printed materials;

(b) Videos, motion pictures and electronically recorded materials;

(c) Internet sites containing photographs, videos, motion pictures or animated productions (e.g. cartoons) depicting, offering or advertising child pornography; and

(d) Live performances.

The report should contain any available data concerning the number of prosecutions and convictions for such offences, disaggregated by nature of offence (sale of children, child prostitution or child pornography).

III. GENERAL MEASURES OF IMPLEMENTATION

13. Reports submitted should contain information on:

(a) All laws, decrees and regulations adopted by the national, State or regional legislatures or other competent bodies of the State party in order to give effect to the Protocol (see annex);

(b) Any significant jurisprudence adopted by the courts of the State party with regard to the sale of children, child prostitution and child pornography, in particular jurisprudence that applies the Convention, the Protocol or related international instruments referred to by these guidelines;

(c) The governmental departments or bodies having primary responsibility for the implementation of this Protocol and the mechanism(s) that have been established or are used to ensure coordination between them and the relevant regional and local authorities, as well as with civil society, including the business sector, the media and academia;

(d) The dissemination of the Protocol and the appropriate training offered to all relevant professional and para-professional groups, including immigration and law enforcement officers, judges, social workers, teachers and legislators;

(e) The mechanisms and procedures used to collect and evaluate data and other information concerning implementation of this Protocol on a periodic or continuing basis;

(f) The budget allocated to the various activities of the State party related to implementation of the present Protocol;

(g) The overall strategy of the State party for the elimination of the sale of children, child prostitution and child pornography and the protection of victims, and any national or regional plans, or particularly significant local ones, that have been adopted in order to strengthen efforts to implement this Protocol, or any components of plans for

advancing the rights of the child, the rights of women or human rights that contain components aimed at the elimination of these practices or protection of victims;

(h) The contributions made by civil society to efforts to eliminate the sale of children, child prostitution and child pornography; and

(i) The role played by statutory ombudspersons for children or similar autonomous public institutions for the rights of children, if any, in implementing this Protocol or in monitoring its implementation (see annex).

IV. PREVENTION (art. 9, paras. 1 and 2)

14. Bearing in mind that article 9, paragraph 1, of the Protocol requires States parties to pay "particular attention" to the protection of children who are "especially vulnerable" to the sale of children, child prostitution or pornography, reports should describe the methods used to identify children who are especially vulnerable to such practices, such as street children, girls, children living in remote areas and those living in poverty. In addition, they should describe the social programmes and policies that have been adopted or strengthened to protect children, in particular especially vulnerable children, from such practices (e.g. in the areas of health and education), as well as any administrative or legal measures (other than those described in response to the guidelines contained in section V) that have been taken to protect children from these practices, including civil registry practices aimed at preventing abuse. Reports also should summarize any available data as to the impact of such social and other measures.

15. Reports should describe any campaigns or other measures that have been taken to promote public awareness of the harmful consequences of the sale of children and child prostitution and pornography, as required by article 9, paragraph 2, of the Protocol, including:

(a) Measures specifically aimed at making children aware of the harmful consequences of such practices, and of resources and sources of assistance intended to prevent children from falling victim to them;

(b) Programmes targeting any specific groups other than children and the general public (e.g. tourists, transportation and hotel workers, adult sex workers, members of the armed forces, correctional personnel);

(c) The role played by NGOs, the media, the private sector and the community, in particular children, in the design and implementation of the awareness measures described above; and

(d) Any steps taken to measure and evaluate the effectiveness of the measures described above, and the results obtained.

V. PROHIBITION AND RELATED MATTERS (arts. 3; 4, paras. 2 and 3; 5; 6 and 7)

16. Reports should provide information on all criminal or penal laws in force covering and defining the acts and activities enumerated in article 3, paragraph 1, of the Protocol, including:

(a) The material elements of all such offences, including any reference to the age of the victim and the sex of the victim or perpetrator;

(b) The maximum and minimum penalties that can be imposed for each of these offences (see annex);

(c) Any defences and aggravating or attenuating circumstances applicable specifically to these offences;

(d) The statute of limitations for each of these offences;

(e) Any other offences recognized by the laws of the State party that it considers relevant to implementation of the present Protocol (see annex); and

(f) The sentences applicable under the law(s) of the State party for attempts to commit and complicity or participation in the offences described in response to this guideline.

17. Reports also should indicate any provisions of the law in force that the State party considers an obstacle to implementation of the present Protocol, and any plans it has to review them.

18. Reports should describe any law concerning the criminal liability of legal persons for the acts and activities enumerated in article 3, paragraph 1, of the Protocol, and comment on the effectiveness of such laws as a deterrent to the sale of children, child prostitution and child pornography; if the law of the State party does not recognize the criminal liability of legal persons for such offences, the report should explain why this is so and the position of the State party on the feasibility and desirability of modifying it (see annex).

19. Reports of States parties whose law permits adoption should indicate the bilateral and multilateral agreements, if any, that are applicable and the measures it has taken to ensure that all persons involved in the adoption of children act in conformity with such agreements and with the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children (General Assembly resolution 41/85 of 3 December 1986), including:

(a) The legal and other measures taken to prevent illegal adoptions, e.g. those that have not been authorized by the authorities competent for dealing with domestic and intercountry adoptions;

(b) The legal and other measures taken to prevent intermediaries from attempting to persuade mothers or pregnant women to give their children for adoption, and to prevent unauthorized persons or agencies from advertising services concerning adoption;

(c) The regulations and licensing of agencies and individuals acting as intermediaries in adoptions, as well as legal practices identified so far;

(d) The legal and administrative measures taken to prevent the theft of young children and to prevent fraudulent birth registration, including applicable criminal sanctions;

(e) The circumstances in which the consent of a parent for adoption can be waived and any safeguards in place that are designed to ensure that consent is informed and freely given; and

(f) Measures to regulate and limit the fees charged by agencies, services or individuals in connection with adoption and the sanctions applicable for non-compliance with them.

20. States parties to this Protocol that recognize adoption and that are not parties to the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption are invited to indicate whether they have considered becoming parties to it and the reasons they have not yet done so.

21. Reports should indicate:

(a) The laws in force prohibiting the production and dissemination of material advertising any of the offences described in the Protocol;

(b) The applicable sanctions;

(c) Any available data or information concerning the number of prosecutions and convictions for such offences, disaggregated by nature of the offence (sale of children, child prostitution or child pornography); and

(d) Whether such laws are effective in preventing advertising for the sale of children, child prostitution and child pornography and, if not, the reasons why and any plans the State has for strengthening such laws and/or their enforcement.

22. Reports should indicate the legal provisions that establish jurisdiction over the offences referred to in article 3 of the Protocol, including information about the grounds for this jurisdiction (see article 4, paragraphs 1 and 3).

23. Reports also should indicate the legal provisions that establish extraterritorial jurisdiction over such offences on the grounds mentioned in article 4, paragraph 2, and/or on any other grounds of jurisdiction recognized by the law of the State party.

24. Reports should describe the law, policy and practice of the State party concerning the extradition of persons accused of having committed one or more of the offences referred to by article 3 of the Protocol, including:

(a) Whether extradition requires the existence of an extradition treaty with the requesting State and, if not, any conditions applied in considering requests for extradition (e.g. reciprocity);

(b) If extradition is conditional on the existence of an extradition treaty in force for the State party and a requesting State, whether the competent authorities of the State party recognize article 5, paragraph 2, as sufficient basis for granting an extradition request made by another party to this Protocol, including in cases in which the extradition request concerns a national of the State receiving the request;

(c) Whether the State party has entered into any extradition treaties since becoming a party to this Protocol or is negotiating any extradition treaties and, if so, whether such treaties recognize the offences corresponding to those referred to in the Protocol as extraditable offences;

(d) Whether the State party, since the entry into force of the Protocol, has refused any request(s) for the extradition of a person

subject to its jurisdiction who was accused by another State of any of the offences referred to in the present Protocol and, if so, the reason for the refusal(s) to extradite, and whether the person(s) concerned was referred to the competent authorities of the State party for prosecution;

(e) The number of requests for extradition for any of the offences referred to the Protocol that have been granted by the State party since the entry into force of the Protocol or since its most recent report on implementation of the Protocol, disaggregated by the nature of the offences;

(f) Whether the State party has, since the entry into force of the Protocol, requested the extradition of any person accused of any of the offences referred to in this Protocol and, if so, whether such request(s) have been honoured by the requested State(s); and

(g) Whether any new legislation, regulations or judicial rules concerning extradition have been proposed, drafted or adopted and, if so, their consequences, if any, for the extradition of persons accused of offences corresponding to the conduct described in article 3 of this Protocol.

25. Reports should describe the legal basis, including international agreements, for cooperation with other States parties with regard to investigations and criminal and extradition proceedings brought with regard to the offences referred to by the Protocol, and the policy and practice of the State party with regard to such cooperation, including examples of cases in which it has cooperated with other States parties and any significant difficulties it has experienced in obtaining the cooperation of other States parties.

26. Reports should describe the law, policy and practice of the State party with regard to:

(a) The seizure and confiscation of materials, assets and or other goods used to commit or facilitate any of the offences set forth in the Protocol;

(b) The seizure and confiscation of proceeds derived from the commission of such offences; and

(c) The closure of premises used to commit such offences, including the execution of requests made by other States parties for the seizure and confiscation of any materials, assets, instrumentalities or proceeds described in article 7 (a) of the Protocol; the State party's experience concerning the response of other parties to its requests for the seizure and confiscation of goods and proceeds; any legislation concerning these matters that has been proposed, drafted or enacted since the entry into force of the Protocol, and any judicial decisions concerning these matters of particular significance.

VI. PROTECTION OF THE RIGHTS OF VICTIMS (arts. 8 and 9, paras. 3 and 4)

27. Reports should contain information on the measures adopted by the State party to implement article 8 of the Protocol with a view to ensure that the rights and best interests of children who have been the victims of the practices prohibited under

the present Protocol are fully recognized, respected and protected at all stages of criminal investigations and proceedings which concern them. States also may wish to describe any efforts made to implement the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime adopted by the Economic and Social Council in 2005 (see annex).

28. Reports should describe the law, policy and practice throughout the territory of the State party regarding the investigation of the offences referred to by the Protocol, in cases in which the victim appears to be below the age of 18 but his or her actual age is unknown (see annex).

29. Reports should describe any rules, regulations, guidelines or instructions that have been adopted by relevant authorities in order to ensure that the best interests of the child are a primary consideration in the treatment afforded by the criminal justice system to children who are victims of any of the offences described in the present Protocol (see annex).

30. Reports also should indicate which provisions of the existing laws, procedures and policies are meant to ensure that the best interests of child victims of such offences are adequately identified and taken into account in criminal investigations and proceedings and, if not, what steps it considers necessary or plans to take to improve compliance with article 8, paragraph 3, of the Protocol (see annex).

31. Reports should indicate what measures are taken to ensure legal, psychological or other training for those who work with victims of the offences prohibited in this Protocol (see annex).

32. Reports should indicate the measures in place that provide the agencies, organizations, networks and individuals with the conditions necessary to carry out their work without fear of interference or reprisals and, if not, what measures are planned or considered necessary to ensure compliance with article 8, paragraph 5, of the Protocol (see annex).

33. Reports should describe any special safeguards or compensatory measures that have been introduced or strengthened in order to ensure that measures designed to protect the rights of child victims of the offences referred to by this Protocol do not have any undue impact on the rights of accused persons to a fair and impartial trial (see annex).

34. Reports should describe existing public and private programmes that provide child victims of sale, prostitution and pornography with assistance in social reintegration, paying special attention to family reunification, and physical and psychological recovery (see annex).

35. Reports should also describe the measures taken by the State party to help the child recover his or her identity, when the exploitation to which the child has been exposed has adversely affected any elements of his or her identity, such as name, nationality and family ties (see annex).

36. Information contained in reports concerning assistance in social reintegration, physical and psychological recovery

and the recovery of identity should indicate any differences between the assistance provided to children who are nationals or presumed to be nationals of the State party and those who are not nationals, or whose nationality is unknown (see annex).

37. Reports should contain information on existing remedies and procedures that may be used by child victims of sale, prostitution or pornography to seek compensation for damages from those legally responsible (see annex).

VII. INTERNATIONAL ASSISTANCE AND COOPERATION

38. Reports should describe:

(a) Any multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for any of the offences referred to by this Protocol that the State party has helped draft, or has negotiated, signed or become a party to;

(b) The steps that have been taken to put in place procedures and mechanisms to coordinate the implementation of such arrangements; and

(c) The results obtained through such arrangements, any significant difficulties encountered in implementing them and any efforts made or considered necessary to improve the implementation of such arrangements.

39. Reports also should describe any other steps taken by the State party to promote international cooperation and coordination concerning the prevention, detection, investigation, prosecution and punishment of the offences referred to by the Protocol between their authorities and relevant regional or international organizations, as well as between the authorities and national and international non-governmental organizations.

40. Reports should describe any steps taken by the State party to support international cooperation to assist the physical and psychological recovery, social reintegration and repatriation of the victims of the offences referred to by this Protocol, including bilateral aid and technical assistance, and support for the activities of international agencies or organizations, international conferences and international research or training programmes, including support for the relevant activities and programmes of national or international non-governmental organizations.

41. Reports should describe the contributions of the State party to international cooperation designed to address root causes that contribute to children's vulnerability to sale, prostitution, pornography and sex tourism, in particular poverty and underdevelopment.

VIII. OTHER LEGAL PROVISIONS (art. 11)

42. Reports should describe:

(a) Any provisions of domestic legislation in force in the State party that it considers more conducive to the realization of the rights of the child than the provisions of this Protocol;

(b) Any provisions of international law binding on the State party that it considers

more conducive to the realization of the rights of the child than the provisions of this Protocol, or that it takes into account in applying the present Protocol; and

(c) The status of ratification by the State party of the main international instruments concerning sale of children, child prostitution, child pornography, trafficking of children and sex tourism, as well as any other international or regional commitments undertaken by that State concerning these issues, and any influence their implementation has had on implementation of the Protocol.

ANNEX

The link between the Optional Protocol and the implementation of the Convention referred to in **Guideline 2** (see paragraph 2 above; guidelines correspond to paragraph numbers) is recognized by the first paragraph of the preamble to the Protocol.

The term forced labour, referred to in **Guideline 10 (c)**, includes any substantial work or services that a person is obliged to perform, by a public official, authority or institution under threat of penalty; work or services performed for private parties under coercion (e.g. the deprivation of liberty, withholding of wages, confiscation of identity documents or threat of punishment) and slavery-like practices such as debt bondage and the marriage or betrothal of a child in exchange for consideration (see International Labour Organization Convention No. 29 (1930) on Forced Labour (arts. 2 and 11), and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (art. 1)).

Trafficking of children, as referred to in **Guideline 10 (f)**, means the recruitment, transportation, transfer, harbouring or receipt of persons under the age of 18 for the purpose of any form of exploitation, including sexual exploitation, the exploitation of child labour or adoption in violation of the relevant international standards, regardless of whether the children or their parents or guardian have expressed consent thereto (see the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (art. 3 (a), (b) and (c))).

Forms of prostitution that, according to **Guideline 11 (b)**, should be distinguished, if possible, include heterosexual and homosexual prostitution, and commercial or other forms of prostitution, such as the delivery of children to temples or religious leaders for the purpose of providing sexual services, sexual slavery, the solicitation by teachers of sexual favours from students and sexual exploitation of child domestic workers.

States may wish to present the information referred to in **Guideline 13 (a)** in the form of a table of relevant laws and their most relevant provisions.

The important role of children's ombudsmen and similar institutions, mentioned in **Guideline 13 (i)**, is described by the

Committee in general comment No. 2 on “The role of independent national human rights institutions in the promotion and protection of the rights of the child”, adopted at its thirty-first session in 2002.

Information provided in response to the guidelines contained in section IV above, in particular in reports made by federal States, States having dependent territories and/or autonomous regions, and States whose legal order recognizes religious, tribal or indigenous law, should include information about the relevant law of all jurisdictions having competence over these matters, including the law applicable to the armed forces.

The reply to **Guideline 16**, especially its subparagraph (b), should distinguish between the penalties applicable to adults convicted of such offences and juveniles who have committed them. Article 3, paragraph 1, of the Protocol provides that States parties shall “as a minimum” ensure that the acts listed are covered by its criminal or penal law; the broader, generic obligation set forth in article 1 is to “prohibit the sale of children, child prostitution and child pornography”.

Hence **Guideline 16 (e)** indicates that reports should indicate any other forms of sale, or any other acts or omissions concerning child prostitution or child pornography, that are covered by its criminal or penal law. In addition, in some countries certain crimes may be used to prosecute the sale of children, child prostitution or child pornography even though they do not expressly prohibit those offences as such. Reports also should describe such offences and explain their application to the sale of children, child prostitution and/or child pornography.

Legal persons, referred to in **Guideline 18**, are entities other than physical persons that have legal personality, such as corporations and other businesses, local or regional governments and legally recognized foundations, organizations and associations.

The applicable international legal instruments in **Guideline 19** include articles 20 and 21 of the Convention, read together with the general principles recognized by articles 2, 3, 6 and 12 of the Convention; the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, which the Committee considers an appropriate instrument for meeting the obligation contained in article 21 (e), of the Convention; the 1967 European Convention on the Adoption of Children (CETS No. 58); the 1990 African Charter on the Rights and Welfare of the Child; the Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, adopted by the General Assembly in 1986; and bilateral treaties on adoption. The Declaration on Social and Legal Principles, which is mentioned in the Preamble to the Convention on the Rights of the Child, is applicable to all States, including those that are not party to any of the treaties mentioned above.

The information referred to in **Guideline 27** should include, in particular:

- (a) Any laws and other legal standards providing that the best interests of the child victim or child witness shall be a primary consideration in criminal justice matters concerning the sale of children, child prostitution and child pornography;
- (b) Any laws or other legal standards, procedures and practices concerning the placement of children considered to be victims of sale, child prostitution or child pornography in protective custody in police or correctional facilities, or public child welfare facilities, during the duration of investigations or legal proceedings against the perpetrators of such acts, and information on the number of children placed in such custody for the duration of such investigations or proceedings, disaggregated if possible according to the age, sex and place of origin of the child, the nature of the facility and the average duration of placement;
- (c) The principle that children shall not be deprived of liberty except as a last resort (see article 37 (b) of the Convention) means that child victims or witnesses should not be kept in police or correctional facilities nor, except in extreme circumstances, closed child welfare facilities, in order to ensure their protection and availability in criminal proceedings;
- (d) Any laws, procedures and practices allowing the placement of children considered to be victims of sale, child prostitution or child pornography in the temporary care of relatives, foster parents, temporary guardians or community-based organizations during the investigations or legal proceedings against the perpetrators of such acts, and information on the number of children so placed, disaggregated if possible according to the age, sex and place of origin of the child, the type of care provider and the average duration of placement;
- (e) Any legal standards that have been adopted recognizing the right of child victims of sale, child prostitution or child pornography to be informed about their legal rights and their potential role in criminal proceedings concerning such exploitation and the scope, timing and progress and outcome of such proceedings, and the practices and procedures that have been established in order to provide children with such information;
- (f) Any legal standards that have been adopted that recognize the right of child victims of sale, child prostitution or child pornography to express or convey their views, needs and concerns about criminal proceedings concerning their exploitation and the duty of investigators, prosecutors and other relevant authorities to take their views and concerns into account; the methods and procedures used to ascertain the views, needs and concerns of child victims of different ages and backgrounds and to communicate them to the relevant authorities; and information regarding the progress made and difficulties encountered, if any, in implementation of such standards and procedures;
- (g) Any programmes and services that provide support to child victims during crimi-

nal proceedings against those responsible for their exploitation, the geographical location and nature of the agencies or organizations responsible (public, subsidized or non-governmental), the nature of the support services provided and the coverage; any available data concerning the age, sex, place of origin and other relevant characteristics of the beneficiaries; the results of any evaluations of the support provided; and the views of the State party as to the adequacy of the coverage, scope and quality of the services available and any plans to expand them;

(h) Any laws or regulations designed to protect the right to privacy and prevent the disclosure of the identity of victims of any of the offences referred to in the Protocol, and any other measures taken by the State party to protect their privacy and prevent the disclosure of their identity, as well as the views of the State party on whether such laws, regulations and other measures are effective and, if not, the reasons why they are not and any plans it has to enhance the protection of their right to privacy and prevent the disclosure of their identity;

(i) The policies, procedures, programmes, protocols or other measures that have been put in place in order to ensure the safety of child victims of sale, prostitution or pornography who may be at risk of retaliation or intimidation and to ensure the safety of their families and of witnesses vulnerable to such risks, as well as the views of the State party on whether such measures have been effective and, if not, the reasons why they have not been and any plans it has to reinforce them, modify them or to adopt new safeguards; and

(j) Any laws, rules, regulations, guidelines or policies that have been adopted by the competent legislative, administrative or judicial authorities in order to avoid unnecessary delay in the disposition of cases involving the offences referred to by this Protocol and in the execution of orders or decrees granting compensation to child victims, as well as any jurisprudence that may have been adopted by the courts of the State party concerning the timely resolution of such matters.

The information referred to in **Guideline 28** should include, in particular:

(a) The measures used to estimate the age of the victim when documentary proof is not available;

(b) The standard of proof for the age of the victim and the legal presumptions, if any, that apply; and

(c) The agency or bodies that are responsible for carrying out investigations with a view to determining the age of the child and the methods used to this end. The information provided in response to Guideline 28 also should indicate whether difficulties in determining the age of presumed victims of the offences referred to by the Protocol to be a substantial obstacle to law enforcement and effective protection of children against such practices and, if so, why it does, and what plans, if any, the State party has to overcome them or what action it considers necessary to address such difficulties. Information provided also should

differentiate, when relevant, between offences that have been committed within the territory of a State party against a child who is a national, and offences in which the victim may not be a national of the State party or the act may have taken place in the territory of another State.

The information provided in response to **Guidelines 29 and 30** should:

(a) Indicate whether the legislation of all relevant jurisdictions of the State party recognizes the requirement that the best interests of the child shall be a primary consideration in the treatment afforded by the criminal justice system to children who are victims of any of the offences described in the Protocol and, if not, what steps, if any, the State party has taken or plans to take to incorporate this principle into the relevant legislation;

(b) Describe any rules, guidelines, policies or jurisprudence concerning how the best interests of children are defined in this context and the methods that are used to determine the best interests of individual child victims;

(c) Describe, in particular, any rules, regulations, guidelines, policies or jurisprudence concerning the methods used to determine the child's views and the weight given to such views in establishing what the best interests of the child are in this context;

(d) Describe, in addition, what steps have been taken and what mechanisms and procedures have been established to provide child victims with objective information, in language adapted to their age and background, about criminal investigations and proceedings regarding offences affecting them, their rights with regard to such investigations and proceedings, and any options or alternative courses of action they may have;

(e) Describe any legislation, regulations, procedures, policies and jurisprudence regarding the legal standing of children with regard to decisions that must be made regarding criminal proceedings concerning offences against them, including any age limit concerning the child's decision whether to testify or otherwise participate in proceedings; the authority of parents or guardians to take such decisions for the child, and the appointment of temporary guardians to ensure that the best interests of the child are identified and respected in the absence of any parent or guardian or in the event of a possible conflict of interest between the child victim and her or his parent(s) or legal guardian; and

(f) Describe the role, if any, of child protection agencies or child rights bodies in criminal proceedings concerning the offences referred to by the Protocol, in particular any role they may play in defending the best interests of the child victim or child witness in such proceedings.

Information requested under **Guideline 31** should provide details as to the agency or agencies that are competent to investigate and/or prosecute the offences referred to by the Protocol and the courts competent over these offences throughout the territory or territories of the State party, and

whether contact with child victims and witnesses by the staff of such agencies is limited to officials assigned especially to cases concerning children; any specific requirements regarding education on the rights of children and child psychology or development applicable to the recruitment or appointment of staff having contact with children; any entry-level or in-service training programmes that provide staff having contact with children and their supervisors with legal, psychological and other relevant training designed to ensure that child victims receive treatment that is sensitive to their age, sex, background and experiences and respectful of their rights, and a brief description of the content and methodology of such training programmes; and the agencies or organizations, public or private, that provide care, shelter and psychosocial services to the victims of the offences referred to by this Protocol, and any applicable regulations concerning the qualifications and training of private service providers.

The information provided in response to **Guideline 32** should indicate the public or private agencies, organizations and networks most involved in efforts to prevent the sale of children, child prostitution and pornography and related practices, as well as those most involved in providing protection, rehabilitation and similar services to the victims of such practices; and describe any significant attacks or threats to the safety, security and integrity of the above-mentioned bodies and their members or staff, as well as the types of measures the State party has adopted to protect the persons or bodies that have been the target of attacks and threats of the kind mentioned above, and the measures or policies that have been adopted as a precaution against such threats or attacks.

For purposes of **Guideline 33**, the rights of accused persons to a fair and impartial trial should be considered to be the rights set forth in articles 14 and 15 of the International Covenant on Civil and Political Rights, in particular the right to be presumed innocent until proved guilty according to law, to have adequate facilities for the preparation of a defence and to examine, or have examined, the witnesses against him.

Information provided in response to **Guideline 34** should include: identification of programmes or services and the agencies or organizations that operate them, their geographical location and a description of the type of services provided; data on the number of children who receive such assistance, disaggregated according to the age and sex of the beneficiaries, the type of abuse suffered and whether the assistance is provided in a residential or non-residential setting; the results of any evaluation(s) that have been made of the assistance provided by existing programmes and information regarding the unmet demand for such services, if any; and any plans the State party has for increasing the capacity of existing programmes or expanding the type of services provided, as well as any other information that it considers relevant.

The right to assistance in social reintegra-

tion and psychological recovery referred to by **Guideline 35** and article 9, paragraph 3, of the Protocol includes the right of children deprived of any element of their identity to assistance in speedily re-establishing their identity, a right also recognized by article 8, paragraph 2, of the Convention on the Rights of the Child.

Information provided in response to **Guideline 36** should include:

(a) The number of children who are not nationals or whose nationality is unknown who are identified annually as victims of sale, child prostitution and child pornography, disaggregated to the extent possible by age, sex, type of exploitation and country of origin;

(b) The policy of the State party regarding the repatriation of child victims and reintegration with their families and community, including the way such policies address issues such as the best interests of the child, the right of the child to have his or her views taken into account, the child's participation in criminal proceedings against those responsible for his or her exploitation and the right of the child to protection against the risk of reprisals and to assistance in physical and psychological rehabilitation;

(c) Any existing legal or administrative agreements with other countries concerning the repatriation of children who have been victims of these forms of exploitation, mutual assistance in re-establishing their identity or relocating their families and for evaluating the appropriateness of return of the child to his or her family or community, as opposed to other forms of social reintegration; and

(d) Information on the progress made and difficulties encountered in safeguarding the right to social reintegration, identity and physical and psychological recovery of children who have been victims of these forms of exploitation and who are not nationals, or whose nationality is unknown, as well as any plans it may have for overcoming the difficulties encountered, if any.

The information provided in response to **Guideline 37** should include:

(a) Whether the child's right to compensation is subordinated to or conditioned by a prior finding of criminal responsibility on the part of those responsible for his or her exploitation;

(b) Procedures and standards regarding the appointment of a guardian or representative for the child for purposes of legal procedures of this kind, when there is an actual, possible or potential conflict between the interests of the child and those of his or her parents;

(c) Standards and procedures concerning the voluntary settlement of cases or complaints involving the sale of children, child prostitution or pornography;

(d) Whether there are any differences between the procedures applicable to cases involving children and those involving adults, insofar as the admissibility of evidence or the way evidence concerning the child victim is presented;

(e) Whether rules and guidelines concerning the management of cases recognize



the importance of the need to avoid undue delay in the resolution of cases involving children, in accordance with article 8, paragraph 1 (g), of the Protocol;

(f) Whether there is any difference in the statute of limitations applicable to claims of compensation for these forms of exploitation, when the victim is a child;

(g) Any special features of the law that concern the use, disposition and safeguarding of damages awarded to children until such time as they reach the age of majority;

(h) Any other special features of existing procedures that may be used by children to seek compensation in the type of cases referred to above that are designed to make them more sensitive to the special needs, rights and vulnerabilities of children;

(i) Whether the information given in reply to the preceding paragraphs of this guideline is applicable to victims who may not be nationals of the State party, and any special measure that may exist to ensure that victims who are not or may not be nationals have equal access to remedies designed to obtain compensation for damages due to the forms of exploitation referred to above;

(j) Any information concerning the number and amount of awards made to children for abuses of this kind, as a result of legal or administrative proceedings or settlements supervised by official bodies, that would help the Committee understand how existing remedies and procedures work in practice;

(k) Whether the State party considers that existing remedies and procedures provide

adequate protection to the right of children who have been victims of the above forms of exploitation to obtain adequate compensation for damages and, if not, what improvements or changes it considers would enhance effective protection of this right. Damages include physical or mental injury, emotional suffering, prejudice to moral interests (e.g. honour, reputation, family ties, moral integrity), denial of one's rights, loss of property, income or other economic loss and expenses incurred in treating any injury and making whole any damage to the victim's rights (see principles 19 and 20 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law).

Universal Declaration of Human Rights

Adopted and proclaimed by
General Assembly resolution 217 A (III)
of 10 December 1948

Preamble



Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

● **Article 1**
All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

● **Article 2**
Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

● **Article 3**
Everyone has the right to life, liberty and security of person.

● **Article 4**
No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

● **Article 5**
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

● **Article 6**
Everyone has the right to recognition everywhere as a person before the law.

● **Article 7**
All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination

in violation of this Declaration and against any incitement to such discrimination.

● **Article 8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

● **Article 9**

No one shall be subjected to arbitrary arrest, detention or exile.

● **Article 10**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

● **Article 11**

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

● **Article 12**

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

● **Article 13**

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

● **Article 14**

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

● **Article 15**

1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

● **Article 16**

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

● **Article 17**

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

● **Article 18**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

● **Article 19**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

● **Article 20**

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

● **Article 21**

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right to equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

● **Article 22**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

● **Article 23**

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

● **Article 24**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

● **Article 25**

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

● **Article 26**

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

● **Article 27**

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

● **Article 28**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

● **Article 29**

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

● **Article 30**

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.



Declaration of the Rights of the Child

Proclaimed by
General Assembly resolution 1386 (XIV)
of 20 November 1959

Preamble

W

hereas the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Whereas the United Nations has, in the Universal Declaration of Human Rights, proclaimed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,

Whereas the need for such special safeguards has been stated in the Geneva Declaration of the Rights of the Child of

1924, and recognized in the Universal Declaration of Human Rights and in the statutes of specialized agencies and international organizations concerned with the welfare of children,

Whereas mankind owes to the child the best it has to give,

Now therefore,

The General Assembly

Proclaims this Declaration of the Rights of the Child to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national Governments to recognize these rights and strive for their observance by legislative and other measures progressively taken in accordance with the following principles:

● Principle 1

The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

● Principle 2

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally,

spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

● Principle 3

The child shall be entitled from his birth to a name and a nationality.

● Principle 4

The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child


shall have the right to adequate nutrition, housing, recreation and medical services.

● Principle 5

The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

● Principle 6

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years



shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

● **Principle 7**

The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society.

The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.

The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

● **Principle 8**

The child shall in all circumstances be among the first to receive protection and relief.

● **Principle 9**

The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

● **Principle 10**

The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966
Entry into force: 23 March 1978, in accordance with Article 49

Preamble

T

he States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and

want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

● Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determina-

tion, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

● Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and

with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

● Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

● Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

● Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

● Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that

nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

● Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

● Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

● Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.

It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

● Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

● Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

● Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

● Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

● Article 14

1. All persons shall be equal before the courts and tribunals. In the determination

of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which

he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

● **Article 15**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

● **Article 16**

Everyone shall have the right to recognition everywhere as a person before the law.

● **Article 17**

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

● **Article 18**

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

● **Article 19**

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may

therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

● **Article 20**

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

● **Article 21**

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

● **Article 22**

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

● **Article 23**

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

● **Article 24**

1. Every child shall have, without any discrimination as to race, colour, sex, language,

religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

● Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

● Article 26

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

● Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

● Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

● Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons.

These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

● Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

● Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

● Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

● Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee,

the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

● Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

● Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

● Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

● Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

● Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

● Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

● Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights: (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

● Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending,

or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

● Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not

resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on tie basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of

the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

● Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

● Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

● Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

● Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations

and of the specialized agencies in regard to the matters dealt with in the present Covenant.

● Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

● Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

● Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

● Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

● Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes. 3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

● Article 52

1. Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

● Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

International Covenant on Economic, Social and Cultural Rights

Adopted and opened for signature, ratification and accession
by General Assembly resolution 2200A (XXI) of 16 December 1966
Entry into force: 3 January 1976, in accordance with article 27

Preamble

T

he States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if

conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

● Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determina-

tion, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

● Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind

as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

● Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

● Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations

as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

● Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

● Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

● Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

● Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade

unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

● Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

● Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child

labour should be prohibited and punishable by law.

● Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

● Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory

and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

● **Article 14**
Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

● **Article 15**
1. The States Parties to the present Covenant recognize the right of everyone:
(a) To take part in cultural life;
(b) To enjoy the benefits of scientific progress and its applications;
(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom

indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields.

PART IV

● Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2.
(a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

● Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

● Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

● Article 19

The Economic and Social Council may transmit to the Commission on Human Rights

for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

● Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

● Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

● Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

● Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

● Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

● Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

● Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

● Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

● Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

● Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General

Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

● Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 26;

(b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

● Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

ILO Minimum Age Convention, 1973 (No.138)

Adopted by the General Conference of the International Labour Organization at its fifty-eighth session on 26 June 1973
Entry into force: 19 June 1976, in accordance with article 12

Preamble

T

he General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its fifty-eighth session on 6 June 1973, and

Having decided upon the adoption of certain proposals with regard to minimum age for admission to employment, which is the fourth item on the agenda of the session, and

Noting the terms of the Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, the Minimum Age (Trimmers and Stokers) Convention, 1921, the Minimum Age (Non-Industrial Employment) Convention, 1932, the Minimum Age (Sea) Convention (Revised), 1936, the Minimum

Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, and the Minimum Age (Underground Work) Convention, 1965, and

Considering that the time has come to establish a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labour, and

Having determined that these proposals shall take the form of an international Convention,

Adopts this twenty-sixth day of June of the year one thousand nine hundred and seventy-three the following Convention, which may be cited as the Minimum Age Convention, 1973:

● Article 1

Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

● Article 2

1. Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.

2. Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office, by further declarations, that it specifies a minimum age higher than that previously specified.

3. The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.

4. Notwithstanding the provisions of paragraph 3 of this Article, a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.

5. Each Member which has specified a minimum age of 14 years in pursuance of the provisions of the preceding paragraph shall include in its reports on the application of this Convention submitted under article 22 of the constitution of the International Labour Organization a statement:

- (a) That its reason for doing so subsists; or
- (b) That it renounces its right to avail itself of the provisions in question as from a stated date.

● Article 3

1. The minimum age for admission to any type of employment or work – which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.

2. The types of employment or work to which paragraph 1 of this Article applies shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, where such exist.

3. Notwithstanding the provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organizations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate instruction or vocational training in the relevant branch of activity.

● Article 4

1. In so far as necessary, the competent authority, after consultation with the organizations of employers and workers concerned, where such exist, may exclude from the application of this Convention limited categories of employment or work in respect of which special and substantial problems of application arise.

2. Each Member which ratifies this Convention shall list in its first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organization any categories which may have been excluded in pursuance of paragraph 1 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice in respect of the categories excluded and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

3. Employment or work covered by Article 3 of this Convention shall not be excluded from the application of the Convention in pursuance of this Article.

● Article 5

1. A Member whose economy and administrative facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, where such exist, initially limit the scope of application of this Convention.

2. Each Member which avails itself of the provisions of paragraph 1 of this Article shall specify, in a declaration appended to its ratification, the branches of economic activity or types of undertakings to which it will apply the provisions of the Convention.

3 The provisions of the Convention shall be applicable as a minimum to the following: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.

4. Any Member which has limited the scope of application of this Convention in pursuance of this Article:

(a) Shall indicate in its reports under article 22 of the Constitution of the International Labour Organization the general position as regards the employment or work of young persons and children in the branches of activity which are excluded from the scope of application of this Convention and any progress which may have been made towards wider application of the provisions of the Convention;

(b) May at any time formally extend the scope of application by a declaration addressed to the Director-General of the International Labour Office.

● Article 6

This Convention does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organizations of employers and workers concerned, where such exist, and is an integral part of:

(a) A course of education or training for which a school or training institution is primarily responsible;

(b) A programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or

(c) A programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.

● Article 7

1. National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is:

(a) Not likely to be harmful to their health or development; and

(b) Not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

2. National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling on work which meets the requirements set forth in sub-paragraphs (a) and (b) of paragraph 1 of this Article.

3. The competent authority shall determine the activities in which employment or work may be permitted under paragraphs 1 and 2 of this Article and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a Member which has availed itself of the provisions of paragraph 4 of Article 2 may, for as long as it continues to do so, substitute the ages 12 and 14 for the ages 13 and 15 in para-

graph 1 and the age 14 for the age 15 in paragraph 2 of this Article.

● Article 8

1. After consultation with the organizations of employers and workers concerned, where such exist, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition of employment or work provided for in Article 2 of this Convention, for such purposes as participation in artistic performances.

2. Permits so granted shall limit the number of hours during which and prescribe the conditions in which employment or work is allowed.

● Article 9

1. All necessary measures, including the provision of appropriate penalties, shall be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention.

2. National laws or regulations or the competent authority shall define the persons responsible for compliance with the provisions giving effect to the Convention.

3. National laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer; such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom he employs or who work for him and who are less than 18 years of age.

● Article 10

1. This Convention revises, on the terms set forth in this Article, the Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, the Minimum Age (Trimmers and Stokers) Convention, 1921, the Minimum Age (Non-Industrial Employment) Convention, 1932, the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, and the Minimum Age (Underground Work) Convention, 1965.

2. The coming into force of this Convention shall not close the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, or the Minimum Age (Underground Work) Convention, 1965, to further ratification.

3. The Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, and the Minimum Age (Trimmers and Stokers) Convention, 1921, shall be closed to further ratification when all the parties thereto have consented to such closing by ratification of this Convention or by a declaration communicated to the Director-General of the International Labour Office.

4. When the obligations of this Convention are accepted:

(a) By a Member which is a party to the Minimum Age (Industry) Convention (Revised), 1937, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention, this shall ipso jure involve the immediate denunciation of that Convention,

(b) In respect of non-industrial employment as defined in the Minimum Age (Non-Industrial Employment) Convention, 1932, by a Member which is a party to that Convention, this shall ipso jure involve the immediate denunciation of that Convention,

(c) In respect of non-industrial employment as defined in the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, by a Member which is a party to that Convention, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention, this shall ipso jure involve the immediate denunciation of that Convention,

(d) In respect of maritime employment, by a Member which is a party to the Minimum Age (Sea) Convention (Revised), 1936, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention or the Member specifies that Article 3 of this Convention applies to maritime employment, this shall ipso jure involve the immediate denunciation of that Convention,

(e) In respect of employment in maritime fishing, by a Member which is a party to the Minimum Age (Fishermen) Convention, 1959, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention or the Member specifies that Article 3 of this Convention applies to employment in maritime fishing, this shall ipso jure involve the immediate denunciation of that Convention,

(f) By a Member which is a party to the Minimum Age (Underground Work) Convention, 1965, and a minimum age of not less than the age specified in pursuance of that Convention is specified in pursuance of Article 2 of this Convention or the Member specifies that such an age applies to employment underground in mines in virtue of Article 3 of this Convention, this shall ipso jure involve the immediate denunciation of that Convention, if and when this Convention shall have come into force.

5. Acceptance of the obligations of this Convention:

(a) Shall involve the denunciation of the Minimum Age (Industry) Convention, 1919, in accordance with Article 12 thereof,

(b) In respect of agriculture shall involve the denunciation of the Minimum Age (Agriculture) Convention, 1921, in accordance with Article 9 thereof,

(c) In respect of maritime employment shall involve the denunciation of the Minimum Age (Sea) Convention, 1920, in accordance with Article 10 thereof, and of the Minimum Age (Trimmers and Stokers) Convention, 1921, in accordance with Article 12 thereof, if and when this Convention shall have come into force.

● Article 11

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

● Article 12

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

● Article 13

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation should not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

● Article 14

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations communicated to him by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

● Article 15

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

● Article 16

At such times as may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

● Article 17

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

(a) The ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 13 above, if and when the new revising Convention shall have come into force;

(b) As from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

● Article 18

The English and French versions of the text of this Convention are equally authoritative.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules")

Adopted by General Assembly resolution 40/33
of 29 November 1985

PART ONE

GENERAL PRINCIPLES

1. Fundamental perspectives

1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.

1.2 Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.

1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.

1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

1.5 These Rules shall be implemented in the context of economic, social and cultural conditions prevailing in each Member State.

1.6 Juvenile justice services shall be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

Commentary

These broad fundamental perspectives refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention. Such care measures for the young, before the onset of delinquency, are basic policy requisites designed to obviate the need for the application of the Rules.

Rules 1.1 to 1.3 point to the important role that a constructive social policy for juveniles will play, *inter alia*, in the prevention of juvenile crime and delinquency. Rule 1.4 defines juvenile justice as an integral part of social justice for juveniles, while rule 1.6 refers to the necessity of constantly improving juvenile justice, without falling behind the development of progressive social policy for juveniles in general and bearing in mind the need for consistent improvement of staff services.

Rule 1.5 seeks to take account of existing conditions in Member States which would cause the manner of implementation of particular rules necessarily to be different from the manner adopted in other States.

2. Scope of the Rules and definitions used

2.1 The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.

2.2 For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts:

(a) A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult;

(b) An offence is any behaviour (act or omission) that is punishable by law under the respective legal systems;

(c) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence.

2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

(a) To meet the varying needs of juvenile offenders, while protecting their basic rights;

(b) To meet the need of society;

To implement the following rules thoroughly and fairly.

Commentary

The Standard Minimum Rules are deliberately formulated so as to be applicable within different legal systems and, at the same time, to set some minimum standards for the handling of juvenile offenders under any definition of a juvenile and under any system of dealing with juvenile offenders. The Rules are always to be applied impartially and without distinction of any kind. Rule 2.1 therefore stresses the importance of the Rules always being applied impartially and without distinction of any kind. The rule follows the formulation of principle 2 of the Declaration of the Rights of the Child.

Rule 2.2 defines "juvenile" and "offence" as the components of the notion of the "juvenile offender", who is the main subject of these Standard Minimum Rules

(see, however, also rules 3 and 4). It should be noted that age limits will depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of “juvenile”, ranging from 7 years to 18 years or above. Such a variety seems inevitable in view of the different national legal systems and does not diminish the impact of these Standard Minimum Rules.

Rule 2.3 is addressed to the necessity of specific national legislation for the optimal implementation of these Standard Minimum Rules, both legally and practically.

3. Extension of the Rules

3.1 The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.

3.2 Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.

3.3 Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.

Commentary

Rule 3 extends the protection afforded by the Standard Minimum Rules for the Administration of Juvenile Justice to cover:

(a) The so-called “status offences” prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for adults (for example, truancy, school and family disobedience, public drunkenness, etc.) (rule 3.1);

(b) Juvenile welfare and care proceedings (rule 3.2);

(c) Proceedings dealing with young adult offenders, depending of course on each given age limit (rule 3.3).

The extension of the Rules to cover these three areas seems to be justified. Rule 3.1 provides minimum guarantees in those fields, and rule 3.2 is considered a desirable step in the direction of more fair, equitable and humane justice for all juveniles in conflict with the law.

4. Age of criminal responsibility

4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

Commentary

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If the

age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.).

Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.

5. Aims of juvenile justice

5.1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

Commentary

Rule 5 refers to two of the most important objectives of juvenile justice. The first objective is the promotion of the well-being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities, but the well-being of the juvenile should also be emphasized in legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions. (See also rule 14.)

The second objective is “the principle of proportionality”. This principle is well-known as an instrument for curbing punitive sanctions, mostly expressed in terms of just deserts in relation to the gravity of the offence. The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reactions (for example by having regard to the offender’s endeavour to indemnify the victim or to her or his willingness to turn to wholesome and useful life).

By the same token, reactions aiming to ensure the welfare of the young offender may go beyond necessity and therefore infringe upon the fundamental rights of the young individual, as has been observed in some juvenile justice systems. Here, too, the proportionality of the reaction to the circumstances of both the offender and the offence, including the victim, should be safeguarded.

In essence, rule 5 calls for no less and no more than a fair reaction in any given cases of juvenile delinquency and crime. The issues combined in the rule may help to stimulate development in both regards: new and innovative types of reactions are as desirable as precautions against any undue widening of the net of formal social control over juveniles.

6. Scope of discretion

6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion

shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.

6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion.

6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

Commentary

Rules 6.1, 6.2 and 6.3 combine several important features of effective, fair and humane juvenile justice administration: the need to permit the exercise of discretionary power at all significant levels of processing so that those who make determinations can take the actions deemed to be most appropriate in each individual case; and the need to provide checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender. Accountability and professionalism are instruments best apt to curb broad discretion. Thus, professional qualifications and expert training are emphasized here as a valuable means of ensuring the judicious exercise of discretion in matters of juvenile offenders. (See also rules 1.6 and 2.2.) The formulation of specific guidelines on the exercise of discretion and the provision of systems of review, appeal and the like in order to permit scrutiny of decisions and accountability are emphasized in this context. Such mechanisms are not specified here, as they do not easily lend themselves to incorporation into international standard minimum rules, which cannot possibly cover all differences in justice systems.

7. Rights of juveniles

7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

Commentary

Rule 7.1 emphasizes some important points that represent essential elements for a fair and just trial and that are internationally recognized in existing human rights instruments (See also rule 14.). The presumption of innocence, for instance, is also to be found in article 11 of the Universal Declaration of Human rights and in article 14, paragraph 2, of the International Covenant on Civil and Political Rights.

Rules 14 seq. of these Standard Minimum Rules specify issues that are important for proceedings in juvenile cases, in particular, while rule 7.1 affirms the most basic procedural safeguards in a general way.

8. Protection of privacy

8.1 The juvenile’s right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue

publicity or by the process of labelling. 8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

Commentary

Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as "delinquent" or "criminal".

Rule 8 stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle. (The general contents of rule 8 are further specified in rule 2 1.)

9. Saving clause

9.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations and other human rights instruments and standards recognized by the international community that relate to the care and protection of the young.

Commentary

Rule 9 is meant to avoid any misunderstanding in interpreting and implementing the present Rules in conformity with principles contained in relevant existing or emerging international human rights instruments and standards—such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and the Declaration of the Rights of the Child and the draft convention on the rights of the child. It should be understood that the application of the present Rules is without prejudice to any such international instruments which may contain provisions of wider application. (See also rule 27.)

PART TWO

INVESTIGATION AND PROSECUTION

10. Initial contact

10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

10.2 A judge or other competent official or body shall, without delay, consider the issue of release.

10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

Commentary

Rule 10.1 is in principle contained in rule 92 of the Standard Minimum Rules for the Treatment of Prisoners.

The question of release (rule 10.2) shall be considered without delay by a judge or other competent official. The latter refers to any person or institution in the broadest sense of the term, including community boards or police authorities having power to release an arrested person. (See also the International Covenant on Civil and Political Rights, article 9, paragraph 3.)

Rule 10.3 deals with some fundamental aspects of the procedures and behaviour on the part of the police and other law enforcement officials in cases of juvenile crime. To "avoid harm" admittedly is flexible wording and covers many features of possible interaction (for example the use of harsh language, physical violence or exposure to the environment). Involvement in juvenile justice processes in itself can be "harmful" to juveniles; the term "avoid harm" should be broadly interpreted, therefore, as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm. This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile's attitude towards the State and society. Moreover, the success of any further intervention is largely dependent on such initial contacts. Compassion and kind firmness are important in these situations.

11. Diversion

11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.

11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

Commentary

Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practised on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence). In many cases,

non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.

As stated in rule 11.2, diversion may be used at any point of decision-making by the police, the prosecution or other agencies such as the courts, tribunals, boards or councils. It may be exercised by one authority or several or all authorities, according to the rules and policies of the respective systems and in line with the present Rules. It need not necessarily be limited to petty cases, thus rendering diversion an important instrument.

Rule 11.3 stresses the important requirement of securing the consent of the young offender (or the parent or guardian) to the recommended diversionary measure(s). (Diversion to community service without such consent would contradict the Abolition of Forced Labour Convention.) However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not feel pressured (for example in order to avoid court appearance) or be pressured into consenting to diversion programmes. Thus, it is advocated that provision should be made for an objective appraisal of the appropriateness of dispositions involving young offenders by a "competent authority upon application". (The "competent authority," may be different from that referred to in rule 14.)

Rule 11.4 recommends the provision of viable alternatives to juvenile justice processing in the form of community-based diversion. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed (for example first offence, the act having been committed under peer pressure, etc.).

12. Specialization within the police

12.1 In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

Commentary

Rule 12 draws attention to the need for specialized training for all law enforcement officials who are involved in the administration of juvenile justice. As police are the first point of contact with the juvenile justice system, it is most important that they

act in an informed and appropriate manner. While the relationship between urbanization and crime is clearly complex, an increase in juvenile crime has been associated with the growth of large cities, particularly with rapid and unplanned growth. Specialized police units would therefore be indispensable, not only in the interest of implementing specific principles contained in the present instrument (such as rule 1.6) but more generally for improving the prevention and control of juvenile crime and the handling of juvenile offenders.

13. Detention pending trial

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.

Commentary

The danger to juveniles of “criminal contamination” while in detention pending trial must not be underestimated. It is therefore important to stress the need for alternative measures. By doing so, rule 13.1 encourages the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile.

Juveniles under detention pending trial are entitled to all the rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights, especially article 9 and article 10, paragraphs 2 (b) and 3.

Rule 13.4 does not prevent States from taking other measures against the negative influences of adult offenders which are at least as effective as the measures mentioned in the rule.

Different forms of assistance that may become necessary have been enumerated to draw attention to the broad range of particular needs of young detainees to be addressed (for example females or males, drug addicts, alcoholics, mentally ill juveniles, young persons suffering from the trauma, for example, of arrest, etc.).

Varying physical and psychological characteristics of young detainees may warrant classification measures by which some are kept separate while in detention pending trial, thus contributing to the avoidance

of victimization and rendering more appropriate assistance.

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4 on juvenile justice standards, specified that the Rules, *inter alia*, should reflect the basic principle that pre-trial detention should be used only as a last resort, that no minors should be held in a facility where they are vulnerable to the negative influences of adult detainees and that account should always be taken of the needs particular to their stage of development.

PART THREE

ADJUDICATION AND DISPOSITION

14. Competent authority to adjudicate

14.1 Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial.

14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

Commentary

It is difficult to formulate a definition of the competent body or person that would universally describe an adjudicating authority. “Competent authority” is meant to include those who preside over courts or tribunals (composed of a single judge or of several members), including professional and lay magistrates as well as administrative boards (for example the Scottish and Scandinavian systems) or other more informal community and conflict resolution agencies of an adjudicatory nature.

The procedure for dealing with juvenile offenders shall in any case follow the minimum standards that are applied almost universally for any criminal defendant under the procedure known as “due process of law”. In accordance with due process, a “fair and just trial” includes such basic safeguards as the presumption of innocence, the presentation and examination of witnesses, the common legal defences, the right to remain silent, the right to have the last word in a hearing, the right to appeal, etc. (See also rule 7.1.)

15. Legal counsel, parents and guardians

15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

Commentary

Rule 15.1 uses terminology similar to that found in rule 93 of the Standard Minimum Rules for the Treatment of Prisoners. Whereas legal counsel and free legal aid are needed to assure the juvenile legal assistance, the right of the parents or guardian to participate as stated in rule 15.2 should be viewed as general psychological and emotional assistance to the juvenile-a function extending throughout the procedure.

The competent authority’s search for an adequate disposition of the case may profit, in particular, from the cooperation of the legal representatives of the juvenile (or, for that matter, some other personal assistant who the juvenile can and does really trust). Such concern can be thwarted if the presence of parents or guardians at the hearings plays a negative role, for instance, if they display a hostile attitude towards the juvenile, hence, the possibility of their exclusion must be provided for.

16. Social inquiry reports

16.1 In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

Commentary

Social inquiry reports (social reports or pre-sentence reports) are an indispensable aid in most legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences, etc. For this purpose, some jurisdictions use special social services or personnel attached to the court or board. Other personnel, including probation officers, may serve the same function. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature.

17. Guiding principles in adjudication and disposition

17.1 The disposition of the competent authority shall be guided by the following principles:

- (a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;
- (b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;
- (c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;
- (d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

17.2 Capital punishment shall not be imposed for any crime committed by juveniles.

17.3 Juveniles shall not be subject to corporal punishment.

17.4 The competent authority shall have the power to discontinue the proceedings at any time.

Commentary

The main difficulty in formulating guidelines for the adjudication of young persons stems from the fact that there are unresolved conflicts of a philosophical nature, such as the following:

(a) Rehabilitation versus just desert;

(b) Assistance versus repression and punishment;

(c) Reaction according to the singular merits of an individual case versus reaction according to the protection of society in general;

(d) General deterrence versus individual incapacitation.

The conflict between these approaches is more pronounced in juvenile cases than in adult cases. With the variety of causes and reactions characterizing juvenile cases, these alternatives become intricately interwoven.

It is not the function of the Standard Minimum Rules for the Administration of Juvenile Justice to prescribe which approach is to be followed but rather to identify one that is most closely in consonance with internationally accepted principles. Therefore the essential elements as laid down in rule 17.1, in particular in subparagraphs (a) and (c), are mainly to be understood as practical guidelines that should ensure a common starting point; if heeded by the concerned authorities (see also rule 5), they could contribute considerably to ensuring that the fundamental rights of juvenile offenders are protected, especially the fundamental rights of personal development and education.

Rule 17.1 (b) implies that strictly punitive approaches are not appropriate. Whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person.

In line with resolution 8 of the Sixth United Nations Congress, rule 17.1 (b) encourages the use of alternatives to institutionalization to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed, bearing the public safety in mind. Probation should be granted to the greatest possible extent via suspended sentences, conditional sentences, board orders and other dispositions.

Rule 17.1 (c) corresponds to one of the guiding principles in resolution 4 of the Sixth Congress which aims at avoiding incarceration in the case of juveniles unless there

is no other appropriate response that will protect the public safety.

The provision prohibiting capital punishment in rule 17.2 is in accordance with article 6, paragraph 5, of the International Covenant on Civil and Political Rights.

The provision against corporal punishment is in line with article 7 of the International Covenant on Civil and Political Rights and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the draft convention on the rights of the child.

The power to discontinue the proceedings at any time (rule 17.4) is a characteristic inherent in the handling of juvenile offenders as opposed to adults. At any time, circumstances may become known to the competent authority which would make a complete cessation of the intervention appear to be the best disposition of the case.

18. Various disposition measures

18.1 A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:

(a) Care, guidance and supervision orders;

(b) Probation;

(c) Community service orders;

(d) Financial penalties, compensation and restitution;

(e) Intermediate treatment and other treatment orders;

(f) Orders to participate in group counselling and similar activities;

(g) Orders concerning foster care, living communities or other educational settings;

(h) Other relevant orders.

18.2 No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

Commentary

Rule 18.1 attempts to enumerate some of the important reactions and sanctions that have been practised and proved successful thus far, in different legal systems. On the whole they represent promising opinions that deserve replication and further development. The rule does not enumerate staffing requirements because of possible shortages of adequate staff in some regions; in those regions measures requiring less staff may be tried or developed.

The examples given in rule 18.1 have in common, above all, a reliance on and an appeal to the community for the effective implementation of alternative dispositions. Community-based correction is a traditional measure that has taken on many aspects. On that basis, relevant authorities should be encouraged to offer community-based services.

Rule 18.2 points to the importance of the family which, according to article 10, paragraph 1, of the International Covenant on

Economic, Social and Cultural Rights, is "the natural and fundamental group unit of society". Within the family, the parents have not only the right but also the responsibility to care for and supervise their children. Rule 18.2, therefore, requires that the separation of children from their parents is a measure of last resort. It may be resorted to only when the facts of the case clearly warrant this grave step (for example child abuse).

19. Least possible use of institutionalization

19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

Commentary

Progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.

Rule 19 aims at restricting institutionalization in two regards: in quantity ("last resort") and in time ("minimum necessary period"). Rule 19 reflects one of the basic guiding principles of resolution 4 of the Sixth United Nations Congress: a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to "open" over "closed" institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

20. Avoidance of unnecessary delay

20.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.

Commentary

The speedy conduct of formal procedures in juvenile cases is a paramount concern. Otherwise whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically.

21. Records

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall

be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

Commentary

The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the interests of the juvenile offender. (See also rule 8.) “Other duly authorized persons” would generally include, among others, researchers.

22. Need for professionalism and training

22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

Commentary

The authorities competent for disposition may be persons with very different backgrounds (magistrates in the United Kingdom of Great Britain and Northern Ireland and in regions influenced by the common law system; legally trained judges in countries using Roman law and in regions influenced by them; and elsewhere elected or appointed laymen or jurists, members of community-based boards, etc.). For all these authorities, a minimum training in law, sociology, psychology, criminology and behavioural sciences would be required. This is considered as important as the organizational specialization and independence of the competent authority.

For social workers and probation officers, it might not be feasible to require professional specialization as a prerequisite for taking over any function dealing with juvenile offenders. Thus, professional on-the-job instruction would be minimum qualifications.

Professional qualifications are an essential element in ensuring the impartial and effective administration of juvenile justice. Accordingly, it is necessary to improve the recruitment, advancement and professional training of personnel and to provide them with the necessary means to enable them to properly fulfil their functions.

All political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided in order to achieve impartiality in the administration of juvenile justice. This was recommended by the Sixth Congress. Furthermore, the Sixth Congress called on Member States to ensure the fair and equal treatment of women as criminal justice personnel and recommended that special

measures should be taken to recruit, train and facilitate the advancement of female personnel in juvenile justice administration.

PART FOUR

NON-INSTITUTIONAL TREATMENT

23. Effective implementation of disposition

23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require.

23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules.

Commentary

Disposition in juvenile cases, more so than in adult cases, tends to influence the offender’s life for a long period of time. Thus, it is important that the competent authority or an independent body (parole board, probation office, youth welfare institutions or others) with qualifications equal to those of the competent authority that originally disposed of the case should monitor the implementation of the disposition. In some countries, a *juge de l’exécution des peines* has been installed for this purpose.

The composition, powers and functions of the authority must be flexible; they are described in general terms in rule 23 in order to ensure wide acceptability.

24. Provision of needed assistance

24.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

Commentary

The promotion of the well-being of the juvenile is of paramount consideration. Thus, rule 24 emphasizes the importance of providing requisite facilities, services and other necessary assistance as may further the best interests of the juvenile throughout the rehabilitative process.

25. Mobilization of volunteers and other community services

25.1 Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

Commentary

This rule reflects the need for a rehabilitative orientation of all work with juvenile offenders. Cooperation with the community is indispensable if the directives of the competent authority are to be carried out effectively. Volunteers and voluntary services, in particular, have proved to be valua-

ble resources but are at present underutilized. In some instances, the cooperation of ex-offenders (including ex-addicts) can be of considerable assistance.

Rule 25 emanates from the principles laid down in rules 1.1 to 1.6 and follows the relevant provisions of the International Covenant on Civil and Political Rights.

PART FIVE

INSTITUTIONAL TREATMENT

26. Objectives of institutional treatment

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance-social, educational, vocational, psychological, medical and physical-that they may require because of their age, sex, and personality and in the interest of their wholesome development .

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

26.6 Inter-ministerial and inter-departmental cooperation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do no leave the institution at an educational disadvantage.

Commentary

The objectives of institutional treatment as stipulated in rules 26.1 and 26.2 would be acceptable to any system and culture. However, they have not yet been attained everywhere, and much more has to be done in this respect.

Medical and psychological assistance, in particular, are extremely important for institutionalized drug addicts, violent and mentally ill young persons.

The avoidance of negative influences through adult offenders and the safeguarding of the well-being of juveniles in an institutional setting, as stipulated in rule 26.3, are in line with one of the basic guiding principles of the Rules, as set out by the Sixth Congress in its resolution 4. The rule does not prevent States from taking other measures against the negative influences of adult offenders, which are at least as effective as the measures mentioned in the rule. (See also rule 13.4.)

Rule 26.4 addresses the fact that female offenders normally receive less attention

than their male counterparts. as pointed out by the Sixth Congress. In particular, resolution 9 of the Sixth Congress calls for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody. Moreover, this rule should also be considered in the light of the Caracas Declaration of the Sixth Congress, which, *inter alia*, calls for equal treatment in criminal justice administration, and against the background of the Declaration on the Elimination of Discrimination against Women and the Convention on the Elimination of All Forms of Discrimination against Women.

The right of access (rule 26.5) follows from the provisions of rules 7.1, 10.1, 15.2 and 18.2. Inter-ministerial and inter-departmental cooperation (rule 26.6) are of particular importance in the interest of generally enhancing the quality of institutional treatment and training.

27. Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations

27.1 The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

Commentary

The Standard Minimum Rules for the Treatment of Prisoners were among the first instruments of this kind to be promulgated by the United Nations. It is generally agreed that they have had a world-wide impact. Although there are still countries where implementation is more an aspiration than a fact, those Standard Minimum Rules continue to be an important influence in the humane and equitable administration of correctional institutions.

Some essential protections covering juvenile offenders in institutions are contained in the Standard Minimum Rules for the Treatment of Prisoners (accommodation, architecture, bedding, clothing, complaints and requests, contact with the outside world, food, medical care, religious service, separation of ages, staffing, work, etc.) as are provisions concerning punishment and discipline, and restraint for dangerous offenders. It would not be appropriate to modify those Standard Minimum Rules according to the particular characteristics of institutions for juvenile offenders within the scope of the Standard Minimum Rules for the Administration of Juvenile Justice. Rule 27 focuses on the necessary requirements for juveniles in institutions (rule 27.1) as well as on the varying needs specific to their age, sex and personality (rule 27.2). Thus, the objectives and content of

the rule interrelate to the relevant provisions of the Standard Minimum Rules for the Treatment of Prisoners.

28. Frequent and early recourse to conditional release

28.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.

28.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

Commentary

The power to order conditional release may rest with the competent authority, as mentioned in rule 14.1, or with some other authority. In view of this, it is adequate to refer here to the "appropriate" rather than to the "competent" authority.

Circumstances permitting, conditional release shall be preferred to serving a full sentence. Upon evidence of satisfactory progress towards rehabilitation, even offenders who had been deemed dangerous at the time of their institutionalization can be conditionally released whenever feasible. Like probation, such release may be conditional on the satisfactory fulfilment of the requirements specified by the relevant authorities for a period of time established in the decision, for example relating to "good behaviour" of the offender, attendance in community programmes, residence in half-way houses, etc.

In the case of offenders conditionally released from an institution, assistance and supervision by a probation or other officer (particularly where probation has not yet been adopted) should be provided and community support should be encouraged.

29. Semi-institutional arrangements

29.1 Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

Commentary

The importance of care following a period of institutionalization should not be underestimated. This rule emphasizes the necessity of forming a net of semi-institutional arrangements.

This rule also emphasizes the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide guidance and structural support as an important step towards successful reintegration into society.

PART SIX

RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION

30. Research as a basis for planning, policy formulation and evaluation

30.1 Efforts shall be made to organize and promote necessary research as a basis for

effective planning and policy formulation. 30.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.

30.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.

30.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.

Commentary

The utilization of research as a basis for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. The mutual feedback between research and policy is especially important in juvenile justice. With rapid and often drastic changes in the life-styles of the young and in the forms and dimensions of juvenile crime, the societal and justice responses to juvenile crime and delinquency quickly become outmoded and inadequate.

Rule 30 thus establishes standards for integrating research into the process of policy formulation and application in juvenile justice administration. The rule draws particular attention to the need for regular review and evaluation of existing programmes and measures and for planning within the broader context of overall development objectives.

A constant appraisal of the needs of juveniles, as well as the trends and problems of delinquency, is a prerequisite for improving the methods of formulating appropriate policies and establishing adequate interventions, at both formal and informal levels. In this context, research by independent persons and bodies should be facilitated by responsible agencies, and it may be valuable to obtain and to take into account the views of juveniles themselves, not only those who come into contact with the system.

The process of planning must particularly emphasize a more effective and equitable system for the delivery of necessary services. Towards that end, there should be a comprehensive and regular assessment of the wide-ranging, particular needs and problems of juveniles and an identification of clear-cut priorities. In that connection, there should also be a coordination in the use of existing resources, including alternatives and community support that would be suitable in setting up specific procedures designed to implement and monitor established programmes.

United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)

Adopted and proclaimed by General Assembly resolution 45/112
of 14 December 1990

I. FUNDAMENTAL PRINCIPLES

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.

2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.

3. For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control.

4. In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme.

5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:

(a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;

(b) Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;

(c) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;

(d) Safeguarding the well-being, development, rights and interests of all young persons;

(e) Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood;

(f) Awareness that, in the predominant opinion of experts, labelling a young person as “deviant”, “delinquent” or “pre-delinquent” often contributes to the development of a consistent pattern of undesirable behaviour by young persons.

II. SCOPE OF THE GUIDELINES

7. The present Guidelines should be interpreted and implemented within the broad framework of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Declaration of the Rights of the Child and the Convention on the Rights of the Child, and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The

Beijing Rules), as well as other instruments and norms relating to the rights, interests and well-being of all children and young persons.

8. The present Guidelines should also be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. General prevention

9. Comprehensive prevention plans should be instituted at every level of Government and include the following:

(a) In-depth analyses of the problem and inventories of programmes, services, facilities and resources available;

(b) Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts;

(c) Mechanisms for the appropriate coordination of prevention efforts between governmental and non-governmental agencies;

(d) Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated in the course of implementation;

(e) Methods for effectively reducing the opportunity to commit delinquent acts;

(f) Community involvement through a wide range of services and programmes;

(g) Close interdisciplinary cooperation between national, State, provincial and local governments, with the involvement of the private sector, representative citizens of the community to be served, and labour, child-care, health education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime;

(h) Youth participation in delinquency prevention policies and processes, including recourse to community resources, youth self-help, and victim compensation and assistance programmes;

(i) Specialized personnel at all levels.

IV. SOCIALIZATION PROCESSES

10. Emphasis should be placed on preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialization and integration processes.

A. Family

11. Every society should place a high priority on the needs and well-being of the family and of all its members.

12. Since the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family, including the extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children. Adequate arrangements including day-care should be provided.

13. Governments should establish policies that are conducive to the bringing up of children in stable and settled family environments. Families in need of assistance in the resolution of conditions of instability or conflict should be provided with requisite services.

14. Where a stable and settled family environment is lacking and when community efforts to assist parents in this regard have failed and the extended family cannot fulfil this role, alternative placements, including foster care and adoption, should be considered. Such placements should replicate, to the extent possible, a stable and settled family environment, while, at the same time, establishing a sense of permanency for children, thus avoiding problems associated with "foster drift".

15. Special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigenous, migrant and refugee families. As such changes may disrupt the social capacity of the family to secure the traditional rearing and nurturing of children, often as a result of role and culture conflict, innovative and socially constructive modalities for the socialization of children have to be designed.

16. Measures should be taken and programmes developed to provide families with the opportunity to learn about parental roles and obligations as regards child development and child care, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community-based activities.

17. Governments should take measures to promote family cohesion and harmony and to discourage the separation of children from their parents, unless circumstances affecting the welfare and future of the child leave no viable alternative.

18. It is important to emphasize the socialization function of the family and extended family; it is also equally important to recognize the future role, responsibilities, participation and partnership of young persons in society.

19. In ensuring the right of the child to proper socialization, Governments and other agencies should rely on existing social and legal agencies, but, whenever traditional institutions and customs are no longer effective, they should also provide and allow for innovative measures.

B. Education

20. Governments are under an obligation to make public education accessible to all young persons.

21. Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:

(a) Teaching of basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child is living, for civilizations different from the child's own and for human rights and fundamental freedoms;

(b) Promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential;

(c) Involvement of young persons as active and effective participants in, rather than mere objects of, the educational process;

(d) Undertaking activities that foster a sense of identity with and of belonging to the school and the community;

(e) Encouragement of young persons to understand and respect diverse views and opinions, as well as cultural and other differences;

(f) Provision of information and guidance regarding vocational training, employment opportunities and career development;

(g) Provision of positive emotional support to young persons and the avoidance of psychological maltreatment;

(h) Avoidance of harsh disciplinary measures, particularly corporal punishment.

22. Educational systems should seek to work together with parents, community organizations and agencies concerned with the activities of young persons.

23. Young persons and their families should be informed about the law and their rights and responsibilities under the law, as well as the universal value system, including United Nations instruments.

24. Educational systems should extend particular care and attention to young persons who are at social risk. Specialized prevention programmes and educational materials, curricula, approaches and tools should be developed and fully utilized.

25. Special attention should be given to comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons. Teachers and other professionals should be equipped and trained to prevent and deal with these problems. Information on the use and abuse of drugs, including alcohol, should be made available to the student body.

26. Schools should serve as resource and referral centres for the provision of medical, counselling and other services to young persons, particularly those with special needs and suffering from abuse, neglect, victimization and exploitation.

27. Through a variety of educational programmes, teachers and other adults and the student body should be sensitized to the problems, needs and perceptions of young persons, particularly those belonging to underprivileged, disadvantaged, ethnic or other minority and low-income groups.

28. School systems should attempt to meet and promote the highest professional and educational standards with respect to curricula, teaching and learning methods and approaches, and the recruitment and training of qualified teachers. Regular monitoring and assessment of performance by the appropriate professional organizations and authorities should be ensured.

29. School systems should plan, develop and implement extracurricular activities of interest to young persons, in cooperation with community groups.

30. Special assistance should be given to children and young persons who find it difficult to comply with attendance codes, and to "drop-outs".

31. Schools should promote policies and rules that are fair and just; students should be represented in bodies formulating school policy, including policy on discipline, and decision-making.

C. Community

32. Community-based services and programmes which respond to the special needs, problems, interests and concerns of young persons and which offer appropriate counselling and guidance to young persons and their families should be developed, or strengthened where they exist.

33. Communities should provide, or strengthen where they exist, a wide range of community-based support measures for young persons, including community development centres, recreational facilities and services to respond to the special problems of children who are at social risk. In providing these helping measures, respect for individual rights should be ensured.

34. Special facilities should be set up to provide adequate shelter for young persons who are no longer able to live at home or who do not have homes to live in.

35. A range of services and helping measures should be provided to deal with the difficulties experienced by young persons in the transition to adulthood. Such services should include special programmes for young drug abusers which emphasize care, counselling, assistance and therapy-oriented interventions.

36. Voluntary organizations providing services for young persons should be given financial and other support by Governments and other institutions.

37. Youth organizations should be created or strengthened at the local level and given full participatory status in the management of community affairs. These organizations should encourage youth to organize

collective and voluntary projects, particularly projects aimed at helping young persons in need of assistance.

38. Government agencies should take special responsibility and provide necessary services for homeless or street children; information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons.

39. A wide range of recreational facilities and services of particular interest to young persons should be established and made easily accessible to them.

D. Mass media

40. The mass media should be encouraged to ensure that young persons have access to information and material from a diversity of national and international sources.

41. The mass media should be encouraged to portray the positive contribution of young persons to society.

42. The mass media should be encouraged to disseminate information on the existence of services, facilities and opportunities for young persons in society.

43. The mass media generally, and the television and film media in particular, should be encouraged to minimize the level of pornography, drugs and violence portrayed and to display violence and exploitation 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.

V. SOCIAL POLICY

45. Government agencies should give high priority to plans and programmes for young persons and should provide sufficient funds and other resources for the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing and other relevant services, including drug and alcohol abuse prevention and treatment, ensuring that such resources reach and actually benefit young persons.

46. The institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance. Criteria authorizing formal intervention of this type should be strictly defined and limited to the following situations: (a) where the child or young person has suffered harm that has been inflicted by the parents or guardians; (b) where the child or young person has been sexually, physically or emotionally abused by the parents or guardians; (c) where the child or young person has been neglected, abandoned or exploited by the parents or guardians; (d) where the child or young

person is threatened by physical or moral danger due to the behaviour of the parents or guardians; and (e) where a serious physical or psychological danger to the child or young person has manifested itself in his or her own behaviour and neither the parents, the guardians, the juvenile himself or herself nor non-residential community services can meet the danger by means other than institutionalization.

47. Government agencies should provide young persons with the opportunity of continuing in full-time education, funded by the State where parents or guardians are unable to support the young persons, and of receiving work experience.

48. Programmes to prevent delinquency should be planned and developed on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly.

49. Scientific information should be disseminated to the professional community and to the public at large about the sort of behaviour or situation which indicates or may result in physical and psychological victimization, harm and abuse, as well as exploitation, of young persons.

50. Generally, participation in plans and programmes should be voluntary. Young persons themselves should be involved in their formulation, development and implementation.

51. Government should begin or continue to explore, develop and implement policies, measures and strategies within and outside the criminal justice system to prevent domestic violence against and affecting young persons and to ensure fair treatment to these victims of domestic violence.

VI. LEGISLATION AND JUVENILE JUSTICE ADMINISTRATION

52. Governments should enact and enforce specific laws and procedures to promote and protect the rights and well-being of all young persons.

53. Legislation preventing the victimization, abuse, exploitation and the use for criminal activities of children and young persons should be enacted and enforced.

54. No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.

55. Legislation and enforcement aimed at restricting and controlling accessibility of weapons of any sort to children and young persons should be pursued.

56. In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.

57. Consideration should be given to the establishment of an office of ombudsman or similar independent organ, which would ensure that the status, rights and interests of young persons are upheld and that proper referral to available services is made. The ombudsman or other organ designated would also supervise the implementation of the Riyadh Guidelines, the Beijing Rules

and the Rules for the Protection of Juveniles Deprived of their Liberty. The ombudsman or other organ would, at regular intervals, publish a report on the progress made and on the difficulties encountered in the implementation of the instrument. Child advocacy services should also be established.

58. Law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system.

59. Legislation should be enacted and strictly enforced to protect children and young persons from drug abuse and drug traffickers.

VII. Research, policy development and coordination

60. Efforts should be made and appropriate mechanisms established to promote, on both a multidisciplinary and an intradisciplinary basis, interaction and coordination between economic, social, education and health agencies and services, the justice system, youth, community and development agencies and other relevant institutions.

61. The exchange of information, experience and expertise gained through projects, programmes, practices and initiatives relating to youth crime, delinquency prevention and juvenile justice should be intensified at the national, regional and international levels.

62. Regional and international cooperation on matters of youth crime, delinquency prevention and juvenile justice involving practitioners, experts and decision makers should be further developed and strengthened.

63. Technical and scientific cooperation on practical and policy-related matters, particularly in training, pilot and demonstration projects, and on specific issues concerning the prevention of youth crime and juvenile delinquency should be strongly supported by all Governments, the United Nations system and other concerned organizations.

64. Collaboration should be encouraged in undertaking scientific research with respect to effective modalities for youth crime and juvenile delinquency prevention and the findings of such research should be widely disseminated and evaluated.

65. Appropriate United Nations bodies, institutes, agencies and offices should pursue close collaboration and coordination on various questions related to children juvenile justice and youth crime and juvenile delinquency prevention.

66. On the basis of the present Guidelines, the United Nations Secretariat, in cooperation with interested institutions, should play an active role in the conduct of research, scientific collaboration, the formulation of policy options and the review and monitoring of their implementation, and should serve as a source of reliable information on effective modalities for delinquency prevention.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty

Adopted by General Assembly resolution 45/113
of 14 December 1990

I. FUNDAMENTAL PERSPECTIVES

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.

2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.

3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.

4. The Rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.

5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.

6. The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not

fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.

7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.

8. The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.

9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community, that are more conducive to ensuring the rights, care and protection of juveniles, children and all young persons.

10. In the event that the practical application of particular Rules contained in sections II to V, inclusive, presents any conflict with the Rules contained in the present section, compliance with the latter shall be regarded as the predominant requirement.

II. SCOPE AND APPLICATION OF THE RULES

11. For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or

her liberty should be determined by law; (b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

13. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

14. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority, while the objectives of social integration should be secured by regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

15. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section

III applies specifically to juveniles under arrest or awaiting trial.

16. The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. JUVENILES UNDER ARREST OR AWAITING TRIAL

17. Juveniles who are detained under arrest or awaiting trial (“untried”) are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

- (a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;
- (b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;
- (c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

IV. THE MANAGEMENT OF JUVENILE FACILITIES

A. Records

19. All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.

20. No juvenile should be received in any detention facility without a valid commit-

ment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.

B. Admission, registration, movement and transfer

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

- (a) Information on the identity of the juvenile;
- (b) The fact of and reasons for commitment and the authority therefor;
- (c) The day and hour of admission, transfer and release;
- (d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;
- (e) Details of known physical and mental health problems, including drug and alcohol abuse.

22. The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.

24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

25. All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.

26. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.

C. Classification and placement

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the

report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

29. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.

30. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

D. Physical environment and accommodation

31. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled

procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.

33. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, while bearing in mind local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

35. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition. All such articles and money should be returned to the juvenile on release, except in so far as he or she has been authorized to spend money or send such property out of the facility. If a juvenile receives or is found in possession of any medicine, the medical officer should decide what use should be made of it.

36. To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.

37. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

E. Education, vocational training and work

38. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of

the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

39. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

40. Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.

41. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.

42. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

44. All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty.

45. Wherever possible, juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

46. Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to indemnify the victim injured by his or her offence or to send it to his or her family or other persons outside the detention facility.

F. Recreation

47. Every juvenile should have the right to a suitable amount of time for daily free exer-

cise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

G. Religion

48. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.

H. Medical care

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

50. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.

52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

53. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.

54. Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.

55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testees in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

I. Notification of illness, injury and death

56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a foreign juvenile is a citizen.

57. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.

58. A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family

member and should be provided with the opportunity to attend the funeral of the deceased or go to the bedside of a critically ill relative.

J. Contacts with the wider community

59. Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.

60. Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel.

61. Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.

62. Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juvenile is interested.

K. Limitations of physical restraint and the use of force

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

L. Disciplinary procedures

66. Any disciplinary measures and procedures should maintain the interest of safety

and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

- (a) Conduct constituting a disciplinary offence;
- (b) Type and duration of disciplinary sanctions that may be inflicted;
- (c) The authority competent to impose such sanctions;
- (d) The authority competent to consider appeals.

69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.

70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

M. Inspection and complaints

72. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access

to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.

73. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.

74. After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them. Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution.

75. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.

76. Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

77. Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

78. Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.

N. Return to the community

79. All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures,

including early release, and special courses should be devised to this end.

80. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community.

V. Personnel

81. Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis. This should not preclude part-time or volunteer workers when the level of support and training they can provide is appropriate and beneficial. Detention facilities should make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles.

82. The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.

83. To secure the foregoing ends, personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men. The personnel of juvenile detention facilities should be continually encouraged to fulfil their duties and obligations in a humane, committed, professional, fair and efficient manner, to conduct themselves at all times in such a way as to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective.

84. The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance cooperation between the various services engaged in the care of juveniles, as well as between

staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favourable to the efficient fulfilment of their duties.

85. The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.

86. The director of a facility should be adequately qualified for his or her task, with administrative ability and suitable training and experience, and should carry out his or her duties on a full-time basis.

87. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:

(a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;

(b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;

(c) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;

(d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;

(e) All personnel should respect the right of the juvenile to privacy, and, in particular, should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;

(f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.

Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption

Hague Conference on Private International Law,
The Hague, 29 May 1993
Entered into force: 1 May 1995

T

he States signatory to the present Convention,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the United Nations Convention on the Rights of the Child, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions:

CHAPTER I

Scope of the Convention

● Article 1

The objects of the present Convention are –
a) to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;

b) to establish a system of cooperation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;

c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

● Article 2

(1) The Convention shall apply where a child habitually resident in one Contracting State (“the State of origin”) has been, is being, or is to be moved to another Contracting

State (“the receiving State”) either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

(2) The Convention covers only adoptions which create a permanent parent-child relationship.

● Article 3

The Convention ceases to apply if the agreements mentioned in Article 17, subparagraph c, have not been given before the child attains the age of eighteen years.

CHAPTER II

Requirements for Intercountry Adoptions

● Article 4

An adoption within the scope of the Convention shall take place only if the competent

authorities of the State of origin –

a) have established that the child is adoptable;

b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child’s best interests;

c) have ensured that

(1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,

(2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,

(3) the consents have not been induced by payment or compensation of any kind and

have not been withdrawn, and
(4) the consent of the mother, where required, has been given only after the birth of the child; and

d) have ensured, having regard to the age and degree of maturity of the child, that
(1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
(2) consideration has been given to the child's wishes and opinions,
(3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
(4) such consent has not been induced by payment or compensation of any kind.

● Article 5

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State –
a) have determined that the prospective adoptive parents are eligible and suited to adopt;
b) have ensured that the prospective adoptive parents have been counselled as may be necessary; and
c) have determined that the child is or will be authorized to enter and reside permanently in that State.

Chapter III

Central Authorities and Accredited Bodies

● Article 6

(1) A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.
(2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

● Article 7

(1) Central Authorities shall cooperate with each other and promote cooperation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.
(2) They shall take directly all appropriate measures to –
a) provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;
b) keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

● Article 8

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or

other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

● Article 9

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to –
a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;
b) facilitate, follow and expedite proceedings with a view to obtaining the adoption;
c) promote the development of adoption counselling and post-adoption services in their States;
d) provide each other with general evaluation reports about experience with intercountry adoption;
e) reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

● Article 10

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

● Article 11

An accredited body shall –
a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;
b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and
c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

● Article 12

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorized it to do so.

● Article 13

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

Chapter IV

Procedural Requirements in Intercountry Adoption

● Article 14

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

● Article 15

(1) If the Central Authority of the receiving State is satisfied that the applicants are

eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.

(2) It shall transmit the report to the Central Authority of the State of origin.

● Article 16

(1) If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall –
a) prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;
b) give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;
c) ensure that consents have been obtained in accordance with Article 4; and
d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

(2) It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

● Article 17

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if –
a) the Central Authority of that State has ensured that the prospective adoptive parents agree;
b) the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;
c) the Central Authorities of both States have agreed that the adoption may proceed; and
d) it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorized to enter and reside permanently in the receiving State.

● Article 18

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

● Article 19

(1) The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.
(2) The Central Authorities of both States shall ensure that this transfer takes place in

secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.

(3) If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

● Article 20

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

● Article 21

(1) Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular –

a) to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;

b) in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;

c) as a last resort, to arrange the return of the child, if his or her interests so require.

(2) Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

● Article 22

(1) The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.

(2) Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who –

a) meet the requirements of integrity, professional competence, experience and accountability of that State; and

b) are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.

(3) A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.

(4) Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in

its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.

(5) Notwithstanding any declaration made under paragraph 2, the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

Chapter V

Recognition and Effects of the Adoption

● Article 23

(1) An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph c), were given.

(2) Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

● Article 24

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

● Article 25

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognize adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

● Article 26

(1) The recognition of an adoption includes recognition of

a) the legal parent-child relationship between the child and his or her adoptive parents;

b) parental responsibility of the adoptive parents for the child;

c) the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.

(2) In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognized, rights equivalent to those resulting from adoptions having this effect in each such State.

(3) The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognizes the adoption.

● Article 27

(1) Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognizes the adoption under the Convention, be converted into an adoption having such an effect –

a) if the law of the receiving State so permits; and

b) if the consents referred to in Article 4, sub-paragraphs c and d, have been or are given for the purpose of such an adoption.

(2) Article 23 applies to the decision converting the adoption.

CHAPTER VI

General Provisions

● Article 28

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

● Article 29

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs a) to c), and Article 5, sub-paragraph a), have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

● Article 30

(1) The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.

(2) They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

● Article 31

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

● Article 32

(1) No one shall derive improper financial or other gain from an activity related to an intercountry adoption.

(2) Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.

(3) The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

● Article 33

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

● Article 34

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

● Article 35

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

● Article 36

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units –

- a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- b) any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;
- c) any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorized to act in the relevant territorial unit;
- d) any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

● Article 37

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

● Article 38

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

● Article 39

(1) The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

(2) Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements

may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

● Article 40

No reservation to the Convention shall be permitted.

● Article 41

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

● Article 42

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII

Final Clauses

● Article 43

(1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.

(2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

● Article 44

(1) Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph 1.

(2) The instrument of accession shall be deposited with the depositary.

(3) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph b) of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

● Article 45

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

(2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

(3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

● Article 46

(1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.

(2) Thereafter the Convention shall enter into force –

a) for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

b) for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

● Article 47

(1) A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

● Article 48

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following –

- a) the signatures, ratifications, acceptances and approvals referred to in Article 43;
- b) the accessions and objections raised to accessions referred to in Article 44;
- c) the date on which the Convention enters into force in accordance with Article 46;
- d) the declarations and designations referred to in Articles 22, 23, 25 and 45;
- e) the agreements referred to in Article 39;
- f) the denunciations referred to in Article 47.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on the 29th day of May 1993, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.



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Standard Rules on the Equalization of Opportunities for Persons with Disabilities

Adopted by General Assembly resolution 48/96
of 20 December 1993

INTRODUCTION

Background and current needs

1. There are persons with disabilities in all parts of the world and at all levels in every society. The number of persons with disabilities in the world is large and is growing.

2. Both the causes and the consequences of disability vary throughout the world. Those variations are the result of different socio-economic circumstances and of the different provisions that States make for the well-being of their citizens.

3. Present disability policy is the result of developments over the past 200 years. In many ways it reflects the general living conditions and social and economic policies of different times. In the disability field, however, there are also many specific circumstances that have influenced the living conditions of persons with disabilities. Ignorance, neglect, superstition and fear are social factors that throughout the history of disability have isolated persons with disabilities and delayed their development.

4. Over the years disability policy developed from elementary care at institutions to education for children with disabilities and rehabilitation for persons who became disabled during adult life. Through education and rehabilitation, persons with disabilities became more active and a driving force in the further development of disability policy. Organizations of persons with disabilities, their families and advocates were formed, which advocated better conditions for persons with disabilities. After the Second World War the concepts of integration and normalization were introduced, which reflected a growing awareness of the capabilities of persons with disabilities.

5. Towards the end of the 1960s organizations of persons with disabilities in some countries started to formulate a new

concept of disability. That new concept indicated the close connection between the limitation experienced by individuals with disabilities, the design and structure of their environments and the attitude of the general population. At the same time the problems of disability in developing countries were more and more highlighted. In some of those countries the percentage of the population with disabilities was estimated to be very high and, for the most part, persons with disabilities were extremely poor.

Previous international action

6. The rights of persons with disabilities have been the subject of much attention in the United Nations and other international organizations over a long period of time. The most important outcome of the International Year of Disabled Persons, 1981, was the World Programme of Action concerning Disabled Persons, adopted by the General Assembly by its resolution 37/52 of 3 December 1982. The Year and the World Programme of Action provided a strong impetus for progress in the field. They both emphasized the right of persons with disabilities to the same opportunities as other citizens and to an equal share in the improvements in living conditions resulting from economic and social development. There also, for the first time, handicap was defined as a function of the relationship between persons with disabilities and their environment.

7. The Global Meeting of Experts to Review the Implementation of the World Programme of Action concerning Disabled Persons at the Mid-Point of the United Nations Decade of Disabled Persons was held at Stockholm in 1987. It was suggested at the Meeting that a guiding philosophy should be developed to indicate the priorities for action in

the years ahead. The basis of that philosophy should be the recognition of the rights of persons with disabilities.

8. Consequently, the Meeting recommended that the General Assembly convene a special conference to draft an international convention on the elimination of all forms of discrimination against persons with disabilities, to be ratified by States by the end of the Decade.

9. A draft outline of the convention was prepared by Italy and presented to the General Assembly at its forty-second session. Further presentations concerning a draft convention were made by Sweden at the forty-fourth session of the Assembly. However, on both occasions, no consensus could be reached on the suitability of such a convention. In the opinion of many representatives, existing human rights documents seemed to guarantee persons with disabilities the same rights as other persons.

Towards standard rules

10. Guided by the deliberations in the General Assembly, the Economic and Social Council, at its first regular session of 1990, finally agreed to concentrate on the elaboration of an international instrument of a different kind. By its resolution 1990/26 of 24 May 1990, the Council authorized the Commission for Social Development to consider, at its thirty-second session, the establishment of an ad hoc open-ended working group of government experts, funded by voluntary contributions, to elaborate standard rules on the equalization of opportunities for disabled children, youth and adults, in close collaboration with the specialized agencies, other intergovernmental bodies and non-governmental organizations, especially organizations of disabled persons. The Council also requested

the Commission to finalize the text of those rules for consideration in 1993 and for submission to the General Assembly at its forty-eighth session.

11. The subsequent discussions in the Third Committee of the General Assembly at the forty-fifth session showed that there was wide support for the new initiative to elaborate standard rules on the equalization of opportunities for persons with disabilities.

12. At the thirty-second session of the Commission for Social Development, the initiative for standard rules received the support of a large number of representatives and discussions led to the adoption of resolution 32/2 of 20 February 1991, in which the Commission decided to establish an ad hoc open-ended working group in accordance with Economic and Social Council resolution 1990/26.

Purpose and content of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities

13. The Standard Rules on the Equalization of Opportunities for Persons with Disabilities have been developed on the basis of the experience gained during the United Nations Decade of Disabled Persons (1983-1992). The International Bill of Human Rights, comprising the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, as well as the World Programme of Action concerning Disabled Persons, constitute the political and moral foundation for the Rules.

14. Although the Rules are not compulsory, they can become international customary rules when they are applied by a great number of States with the intention of respecting a rule in international law. They imply a strong moral and political commitment on behalf of States to take action for the equalization of opportunities for persons with disabilities. Important principles for responsibility, action and cooperation are indicated. Areas of decisive importance for the quality of life and for the achievement of full participation and equality are pointed out. The Rules offer an instrument for policy-making and action to persons with disabilities and their organizations. They provide a basis for technical and economic cooperation among States, the United Nations and other international organizations.

15. The purpose of the Rules is to ensure that girls, boys, women and men with disabilities, as members of their societies, may exercise the same rights and obligations as others. In all societies of the world there are still obstacles preventing persons with disabilities from exercising their rights and freedoms and making it difficult for them to participate fully in the activities of their societies. It is the responsibility of States to take appropriate action to remove such obstacles. Persons with disabilities and their organizations should play an active role as

partners in this process. The equalization of opportunities for persons with disabilities is an essential contribution in the general and worldwide effort to mobilize human resources. Special attention may need to be directed towards groups such as women, children, the elderly, the poor, migrant workers, persons with dual or multiple disabilities, indigenous people and ethnic minorities. In addition, there are a large number of refugees with disabilities who have special needs requiring attention.

Fundamental concepts in disability policy

16. The concepts set out below appear throughout the Rules. They are essentially built on the concepts in the World Programme of Action concerning Disabled Persons. In some cases they reflect the development that has taken place during the United Nations Decade of Disabled Persons.

Disability and handicap

17. The term "disability" summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature.

18. The term "handicap" means the loss or limitation of opportunities to take part in the life of the community on an equal level with others. It describes the encounter between the person with a disability and the environment. The purpose of this term is to emphasize the focus on the shortcomings in the environment and in many organized activities in society, for example, information, communication and education, which prevent persons with disabilities from participating on equal terms.

19. The use of the two terms "disability" and "handicap", as defined in paragraphs 17 and 18 above, should be seen in the light of modern disability history. During the 1970s there was a strong reaction among representatives of organizations of persons with disabilities and professionals in the field of disability against the terminology of the time. The terms "disability" and "handicap" were often used in an unclear and confusing way, which gave poor guidance for policy-making and for political action. The terminology reflected a medical and diagnostic approach, which ignored the imperfections and deficiencies of the surrounding society.

20. In 1980, the World Health Organization adopted an international classification of impairments, disabilities and handicaps, which suggested a more precise and at the same time relativistic approach. The International Classification of Impairments, Disabilities, and Handicaps makes a clear distinction between "impairment", "disability" and "handicap". It has been extensively used in areas such as rehabilitation, education, statistics, policy, legislation, demography, sociology, economics and anthropology. Some users have expressed concern that the Classification, in its defi-

nition of the term "handicap", may still be considered too medical and too centred on the individual, and may not adequately clarify the interaction between societal conditions or expectations and the abilities of the individual. Those concerns, and others expressed by users during the 12 years since its publication, will be addressed in forthcoming revisions of the Classification.

21. As a result of experience gained in the implementation of the World Programme of Action and of the general discussion that took place during the United Nations Decade of Disabled Persons, there was a deepening of knowledge and extension of understanding concerning disability issues and the terminology used. Current terminology recognizes the necessity of addressing both the individual needs (such as rehabilitation and technical aids) and the shortcomings of the society (various obstacles for participation).

Prevention

22. The term "prevention" means action aimed at preventing the occurrence of physical, intellectual, psychiatric or sensory impairments (primary prevention) or at preventing impairments from causing a permanent functional limitation or disability (secondary prevention). Prevention may include many different types of action, such as primary health care, prenatal and postnatal care, education in nutrition, immunization campaigns against communicable diseases, measures to control endemic diseases, safety regulations, programmes for the prevention of accidents in different environments, including adaptation of workplaces to prevent occupational disabilities and diseases, and prevention of disability resulting from pollution of the environment or armed conflict.

Rehabilitation

23. The term "rehabilitation" refers to a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric and/or social functional levels, thus providing them with the tools to change their lives towards a higher level of independence. Rehabilitation may include measures to provide and/or restore functions, or compensate for the loss or absence of a function or for a functional limitation. The rehabilitation process does not involve initial medical care. It includes a wide range of measures and activities from more basic and general rehabilitation to goal-oriented activities, for instance vocational rehabilitation.

Equalization of opportunities

24. The term "equalization of opportunities" means the process through which the various systems of society and the environment, such as services, activities, information and documentation, are made available to all, particularly to persons with disabilities.

25. The principle of equal rights implies that the needs of each and every individual are of equal importance, that those needs must be made the basis for the planning of societies and that all resources must be employed in such a way as to ensure that



every individual has equal opportunity for participation.

26. Persons with disabilities are members of society and have the right to remain within their local communities. They should receive the support they need within the ordinary structures of education, health, employment and social services.

27. As persons with disabilities achieve equal rights, they should also have equal obligations. As those rights are being achieved, societies should raise their expectations of persons with disabilities. As part of the process of equal opportunities, provision should be made to assist persons with disabilities to assume their full responsibility as members of society.

PREAMBLE

States,

Mindful of the pledge made, under the Charter of the United Nations, to take joint and separate action in cooperation with the Organization to promote higher standards of living, full employment, and conditions of economic and social progress and development,

Reaffirming the commitment to human rights and fundamental freedoms, social justice and the dignity and worth of the human person proclaimed in the Charter, Recalling in particular the international standards on human rights, which have been laid down in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights,

Underlining that those instruments proclaim that the rights recognized therein should be ensured equally to all individuals without discrimination,

Recalling the Convention on the Rights of the Child, which prohibits discrimination on the basis of disability and requires special measures to ensure the rights of children with disabilities, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which provides for some protective measures against disability,

Recalling also the provisions in the Convention on the Elimination of All Forms of Discrimination against Women to ensure the rights of girls and women with disabilities, Having regard to the Declaration on the Rights of Disabled Persons, the Declaration on the Rights of Mentally Retarded Persons, the Declaration on Social Progress and Development, the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care and other relevant instruments adopted by the General Assembly,

Also having regard to the relevant conventions and recommendations adopted by the International Labour Organisation, with particular reference to participation in employment without discrimination for persons with disabilities,

Mindful of the relevant recommendations and work of the United Nations Educational, Scientific and Cultural Organization, in par-

ticular the World Declaration on Education for All, the World Health Organization, the United Nations Children's Fund and other concerned organizations,

Having regard to the commitment made by States concerning the protection of the environment,

Mindful of the devastation caused by armed conflict and deploring the use of scarce resources in the production of weapons, Recognizing that the World Programme of Action concerning Disabled Persons and the definition therein of equalization of opportunities represent earnest ambitions on the part of the international community to render those various international instruments and recommendations of practical and concrete significance,

Acknowledging that the objective of the United Nations Decade of Disabled Persons (1983-1992) to implement the World Programme of Action is still valid and requires urgent and continued action,

Recalling that the World Programme of Action is based on concepts that are equally valid in developing and industrialized countries,

Convinced that intensified efforts are needed to achieve the full and equal enjoyment of human rights and participation in society by persons with disabilities,

Re-emphasizing that persons with disabilities, and their parents, guardians, advocates and organizations, must be active partners with States in the planning and implementation of all measures affecting their civil, political, economic, social and cultural rights,

In pursuance of Economic and Social Council resolution 1990/26, and basing themselves on the specific measures required for the attainment by persons with disabilities of equality with others, enumerated in detail in the World Programme of Action, Have adopted the Standard Rules on the Equalization of Opportunities for Persons with Disabilities outlined below, in order:

(a) To stress that all action in the field of disability presupposes adequate knowledge and experience of the conditions and special needs of persons with disabilities;

(b) To emphasize that the process through which every aspect of societal organization is made accessible to all is a basic objective of socio-economic development;

(c) To outline crucial aspects of social policies in the field of disability, including, as appropriate, the active encouragement of technical and economic cooperation;

(d) To provide models for the political decision-making process required for the attainment of equal opportunities, bearing in mind the widely differing technical and economic levels, the fact that the process must reflect keen understanding of the cultural context within which it takes place and the crucial role of persons with disabilities in it;

(e) To propose national mechanisms for close collaboration among States, the organs of the United Nations system, other intergovernmental bodies and organizations of persons with disabilities;

(f) To propose an effective machinery for monitoring the process by which States

seek to attain the equalization of opportunities for persons with disabilities.

I. PRECONDITIONS FOR EQUAL PARTICIPATION

Rule 1 Awareness-raising

States should take action to raise awareness in society about persons with disabilities, their rights, their needs, their potential and their contribution.

1. States should ensure that responsible authorities distribute up-to-date information on available programmes and services to persons with disabilities, their families, professionals in the field and the general public. Information to persons with disabilities should be presented in accessible form.

2. States should initiate and support information campaigns concerning persons with disabilities and disability policies, conveying the message that persons with disabilities are citizens with the same rights and obligations as others, thus justifying measures to remove all obstacles to full participation.

3. States should encourage the portrayal of persons with disabilities by the mass media in a positive way; organizations of persons with disabilities should be consulted on this matter.

4. States should ensure that public education programmes reflect in all their aspects the principle of full participation and equality.

5. States should invite persons with disabilities and their families and organizations to participate in public education programmes concerning disability matters.

6. States should encourage enterprises in the private sector to include disability issues in all aspects of their activity.

7. States should initiate and promote programmes aimed at raising the level of awareness of persons with disabilities concerning their rights and potential. Increased self-reliance and empowerment will assist persons with disabilities to take advantage of the opportunities available to them.

8. Awareness-raising should be an important part of the education of children with disabilities and in rehabilitation programmes. Persons with disabilities could also assist one another in awareness-raising through the activities of their own organizations.

9. Awareness-raising should be part of the education of all children and should be a component of teacher-training courses and training of all professionals.

Rule 2 Medical care

States should ensure the provision of effective medical care to persons with disabilities.

1. States should work towards the provision of programmes run by multidisciplinary teams of professionals for early detection, assessment and treatment of impairment. This could prevent, reduce or eliminate disabling effects. Such programmes should ensure the full participation of persons with disabilities and their families at the individual level, and of organizations of persons with disabilities at the planning and evaluation level.

2. Local community workers should be trained to participate in areas such as early detection of impairments, the provision of primary assistance and referral to appropriate services.

3. States should ensure that persons with disabilities, particularly infants and children, are provided with the same level of medical care within the same system as other members of society.

4. States should ensure that all medical and paramedical personnel are adequately trained and equipped to give medical care to persons with disabilities and that they have access to relevant treatment methods and technology.

5. States should ensure that medical, paramedical and related personnel are adequately trained so that they do not give inappropriate advice to parents, thus restricting options for their children. This training should be an ongoing process and should be based on the latest information available.

6. States should ensure that persons with disabilities are provided with any regular treatment and medicines they may need to preserve or improve their level of functioning.

Rule 3 Rehabilitation

States should ensure the provision of rehabilitation services to persons with disabilities in order for them to reach and sustain their optimum level of independence and functioning.

1. States should develop national rehabilitation programmes for all groups of persons with disabilities. Such programmes should be based on the actual individual needs of persons with disabilities and on the principles of full participation and equality.

2. Such programmes should include a wide range of activities, such as basic skills training to improve or compensate for an affected function, counselling of persons with disabilities and their families, developing self-reliance, and occasional services such as assessment and guidance.

3. All persons with disabilities, including persons with severe and/or multiple disabilities, who require rehabilitation should have access to it.

4. Persons with disabilities and their families should be able to participate in the design and organization of rehabilitation services concerning themselves.

5. All rehabilitation services should be available in the local community where the person with disabilities lives. However, in some instances, in order to attain a certain training objective, special time-limited rehabilitation courses may be organized, where appropriate, in residential form.

6. Persons with disabilities and their families should be encouraged to involve themselves in rehabilitation, for instance as trained teachers, instructors or counsellors.

7. States should draw upon the expertise of organizations of persons with disabilities when formulating or evaluating rehabilitation programmes.

Rule 4 Support services

States should ensure the development and supply of support services, including assis-

tive devices for persons with disabilities, to assist them to increase their level of independence in their daily living and to exercise their rights.

1. States should ensure the provision of assistive devices and equipment, personal assistance and interpreter services, according to the needs of persons with disabilities, as important measures to achieve the equalization of opportunities.

2. States should support the development, production, distribution and servicing of assistive devices and equipment and the dissemination of knowledge about them.

3. To achieve this, generally available technical know-how should be utilized. In States where high-technology industry is available, it should be fully utilized to improve the standard and effectiveness of assistive devices and equipment. It is important to stimulate the development and production of simple and inexpensive devices, using local material and local production facilities when possible. Persons with disabilities themselves could be involved in the production of those devices.

4. States should recognize that all persons with disabilities who need assistive devices should have access to them as appropriate, including financial accessibility. This may mean that assistive devices and equipment should be provided free of charge or at such a low price that persons with disabilities or their families can afford to buy them.

5. In rehabilitation programmes for the provision of assistive devices and equipment, States should consider the special requirements of girls and boys with disabilities concerning the design, durability and age-appropriateness of assistive devices and equipment.

6. States should support the development and provision of personal assistance programmes and interpretation services, especially for persons with severe and/or multiple disabilities. Such programmes would increase the level of participation of persons with disabilities in everyday life at home, at work, in school and during leisure-time activities.

7. Personal assistance programmes should be designed in such a way that the persons with disabilities using the programmes have a decisive influence on the way in which the programmes are delivered.

II. TARGET AREAS FOR EQUAL PARTICIPATION

Rule 5 Accessibility

States should recognize the overall importance of accessibility in the process of the equalization of opportunities in all spheres of society. For persons with disabilities of any kind, States should (a) introduce programmes of action to make the physical environment accessible; and (b) undertake measures to provide access to information and communication.

(a) Access to the physical environment

1. States should initiate measures to remove the obstacles to participation in the physical environment. Such measures should be to develop standards and guidelines and to consider enacting legislation to ensure

accessibility to various areas in society, such as housing, buildings, public transport services and other means of transportation, streets and other outdoor environments.

2. States should ensure that architects, construction engineers and others who are professionally involved in the design and construction of the physical environment have access to adequate information on disability policy and measures to achieve accessibility.

3. Accessibility requirements should be included in the design and construction of the physical environment from the beginning of the designing process.

4. Organizations of persons with disabilities should be consulted when standards and norms for accessibility are being developed. They should also be involved locally from the initial planning stage when public construction projects are being designed, thus ensuring maximum accessibility.

(b) Access to information and communication

5. Persons with disabilities and, where appropriate, their families and advocates should have access to full information on diagnosis, rights and available services and programmes, at all stages. Such information should be presented in forms accessible to persons with disabilities.

6. States should develop strategies to make information services and documentation accessible for different groups of persons with disabilities. Braille, tape services, large print and other appropriate technologies should be used to provide access to written information and documentation for persons with visual impairments. Similarly, appropriate technologies should be used to provide access to spoken information for persons with auditory impairments or comprehension difficulties.

7. Consideration should be given to the use of sign language in the education of deaf children, in their families and communities. Sign language interpretation services should also be provided to facilitate the communication between deaf persons and others.

8. Consideration should also be given to the needs of people with other communication disabilities.

9. States should encourage the media, especially television, radio and newspapers, to make their services accessible.

10. States should ensure that new computerized information and service systems offered to the general public are either made initially accessible or are adapted to be made accessible to persons with disabilities.

11. Organizations of persons with disabilities should be consulted when measures to make information services accessible are being developed.

Rule 6 Education

States should recognize the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in integrated settings. They should ensure that the education of persons with disabilities is an integral part of the educational system.



1. General educational authorities are responsible for the education of persons with disabilities in integrated settings. Education for persons with disabilities should form an integral part of national educational planning, curriculum development and school organization.

2. Education in mainstream schools presupposes the provision of interpreter and other appropriate support services. Adequate accessibility and support services, designed to meet the needs of persons with different disabilities, should be provided.

3. Parent groups and organizations of persons with disabilities should be involved in the education process at all levels.

4. In States where education is compulsory it should be provided to girls and boys with all kinds and all levels of disabilities, including the most severe.

5. Special attention should be given in the following areas:

- (a) Very young children with disabilities;
- (b) Pre-school children with disabilities;
- (c) Adults with disabilities, particularly women.

6. To accommodate educational provisions for persons with disabilities in the mainstream, States should:

- (a) Have a clearly stated policy, understood and accepted at the school level and by the wider community;
- (b) Allow for curriculum flexibility, addition and adaptation;
- (c) Provide for quality materials, ongoing teacher training and support teachers.

7. Integrated education and community-based programmes should be seen as complementary approaches in providing cost-effective education and training for persons with disabilities. National community-based programmes should encourage communities to use and develop their resources to provide local education to persons with disabilities.

8. In situations where the general school system does not yet adequately meet the needs of all persons with disabilities, special education may be considered. It should be aimed at preparing students for education in the general school system. The quality of such education should reflect the same standards and ambitions as general education and should be closely linked to it. At a minimum, students with disabilities should be afforded the same portion of educational resources as students without disabilities. States should aim for the gradual integration of special education services into mainstream education. It is acknowledged that in some instances special education may currently be considered to be the most appropriate form of education for some students with disabilities.

9. Owing to the particular communication needs of deaf and deaf/blind persons, their education may be more suitably provided in schools for such persons or special classes and units in mainstream schools. At the initial stage, in particular, special attention needs to be focused on culturally sensitive instruction that will result in effective communication skills and maximum independence for people who are deaf or deaf/blind.

Rule 7 Employment

States should recognize the principle that persons with disabilities must be empowered to exercise their human rights, particularly in the field of employment. In both rural and urban areas they must have equal opportunities for productive and gainful employment in the labour market.

1. Laws and regulations in the employment field must not discriminate against persons with disabilities and must not raise obstacles to their employment.
2. States should actively support the integration of persons with disabilities into open employment. This active support could occur through a variety of measures, such as vocational training, incentive-oriented quota schemes, reserved or designated employment, loans or grants for small business, exclusive contracts or priority production rights, tax concessions, contract compliance or other technical or financial assistance to enterprises employing workers with disabilities. States should also encourage employers to make reasonable adjustments to accommodate persons with disabilities.
3. States' action programmes should include:
 - (a) Measures to design and adapt workplaces and work premises in such a way that they become accessible to persons with different disabilities;
 - (b) Support for the use of new technologies and the development and production of assistive devices, tools and equipment and measures to facilitate access to such devices and equipment for persons with disabilities to enable them to gain and maintain employment;
 - (c) Provision of appropriate training and placement and ongoing support such as personal assistance and interpreter services.
4. States should initiate and support public awareness-raising campaigns designed to overcome negative attitudes and prejudices concerning workers with disabilities.
5. In their capacity as employers, States should create favourable conditions for the employment of persons with disabilities in the public sector.
6. States, workers' organizations and employers should cooperate to ensure equitable recruitment and promotion policies, employment conditions, rates of pay, measures to improve the work environment in order to prevent injuries and impairments and measures for the rehabilitation of employees who have sustained employment-related injuries.
7. The aim should always be for persons with disabilities to obtain employment in the open labour market. For persons with disabilities whose needs cannot be met in open employment, small units of sheltered or supported employment may be an alternative. It is important that the quality of such programmes be assessed in terms of their relevance and sufficiency in providing opportunities for persons with disabilities to gain employment in the labour market.
8. Measures should be taken to include persons with disabilities in training and

employment programmes in the private and informal sectors.

9. States, workers' organizations and employers should cooperate with organizations of persons with disabilities concerning all measures to create training and employment opportunities, including flexible hours, part-time work, job-sharing, self-employment and attendant care for persons with disabilities.

Rule 8 Income maintenance and social security

States are responsible for the provision of social security and income maintenance for persons with disabilities.

1. States should ensure the provision of adequate income support to persons with disabilities who, owing to disability or disability-related factors, have temporarily lost or received a reduction in their income or have been denied employment opportunities. States should ensure that the provision of support takes into account the costs frequently incurred by persons with disabilities and their families as a result of the disability.
2. In countries where social security, social insurance or other social welfare schemes exist or are being developed for the general population, States should ensure that such systems do not exclude or discriminate against persons with disabilities.
3. States should also ensure the provision of income support and social security protection to individuals who undertake the care of a person with a disability.
4. Social security systems should include incentives to restore the income-earning capacity of persons with disabilities. Such systems should provide or contribute to the organization, development and financing of vocational training. They should also assist with placement services.
5. Social security programmes should also provide incentives for persons with disabilities to seek employment in order to establish or re-establish their income-earning capacity.
6. Income support should be maintained as long as the disabling conditions remain in a manner that does not discourage persons with disabilities from seeking employment. It should only be reduced or terminated when persons with disabilities achieve adequate and secure income.
7. States, in countries where social security is to a large extent provided by the private sector, should encourage local communities, welfare organizations and families to develop self-help measures and incentives for employment or employment-related activities for persons with disabilities.

Rule 9 Family life and personal integrity

States should promote the full participation of persons with disabilities in family life. They should promote their right to personal integrity and ensure that laws do not discriminate against persons with disabilities with respect to sexual relationships, marriage and parenthood.

1. Persons with disabilities should be enabled to live with their families. States

should encourage the inclusion in family counselling of appropriate modules regarding disability and its effects on family life. Respite-care and attendant-care services should be made available to families which include a person with disabilities. States should remove all unnecessary obstacles to persons who want to foster or adopt a child or adult with disabilities.

2. Persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood. Taking into account that persons with disabilities may experience difficulties in getting married and setting up a family, States should encourage the availability of appropriate counselling. Persons with disabilities must have the same access as others to family-planning methods, as well as to information in accessible form on the sexual functioning of their bodies.

3. States should promote measures to change negative attitudes towards marriage, sexuality and parenthood of persons with disabilities, especially of girls and women with disabilities, which still prevail in society. The media should be encouraged to play an important role in removing such negative attitudes.

4. Persons with disabilities and their families need to be fully informed about taking precautions against sexual and other forms of abuse. Persons with disabilities are particularly vulnerable to abuse in the family, community or institutions and need to be educated on how to avoid the occurrence of abuse, recognize when abuse has occurred and report on such acts.

Rule 10 Culture

States will ensure that persons with disabilities are integrated into and can participate in cultural activities on an equal basis.

1. States should ensure that persons with disabilities have the opportunity to utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of their community, be they in urban or rural areas. Examples of such activities are dance, music, literature, theatre, plastic arts, painting and sculpture. Particularly in developing countries, emphasis should be placed on traditional and contemporary art forms, such as puppetry, recitation and story-telling.

2. States should promote the accessibility to and availability of places for cultural performances and services, such as theatres, museums, cinemas and libraries, to persons with disabilities.

3. States should initiate the development and use of special technical arrangements to make literature, films and theatre accessible to persons with disabilities.

Rule 11 Recreation and sports

States will take measures to ensure that persons with disabilities have equal opportunities for recreation and sports.

1. States should initiate measures to make places for recreation and sports, hotels, beaches, sports arenas, gym halls, etc.,

accessible to persons with disabilities. Such measures should encompass support for staff in recreation and sports programmes, including projects to develop methods of accessibility, and participation, information and training programmes.

2. Tourist authorities, travel agencies, hotels, voluntary organizations and others involved in organizing recreational activities or travel opportunities should offer their services to all, taking into account the special needs of persons with disabilities. Suitable training should be provided to assist that process.

3. Sports organizations should be encouraged to develop opportunities for participation by persons with disabilities in sports activities. In some cases, accessibility measures could be enough to open up opportunities for participation. In other cases, special arrangements or special games would be needed. States should support the participation of persons with disabilities in national and international events.

4. Persons with disabilities participating in sports activities should have access to instruction and training of the same quality as other participants.

5. Organizers of sports and recreation should consult with organizations of persons with disabilities when developing their services for persons with disabilities.

Rule 12 Religion

States will encourage measures for equal participation by persons with disabilities in the religious life of their communities.

1. States should encourage, in consultation with religious authorities, measures to eliminate discrimination and make religious activities accessible to persons with disabilities.

2. States should encourage the distribution of information on disability matters to religious institutions and organizations. States should also encourage religious authorities to include information on disability policies in the training for religious professions, as well as in religious education programmes.

3. They should also encourage the accessibility of religious literature to persons with sensory impairments.

4. States and/or religious organizations should consult with organizations of persons with disabilities when developing measures for equal participation in religious activities.

III. IMPLEMENTATION MEASURES

Rule 13 Information and research

States assume the ultimate responsibility for the collection and dissemination of information on the living conditions of persons with disabilities and promote comprehensive research on all aspects, including obstacles that affect the lives of persons with disabilities.

1. States should, at regular intervals, collect gender-specific statistics and other information concerning the living conditions of persons with disabilities. Such data collection could be conducted in conjunction with national censuses and household surveys and could be undertaken in close

collaboration, *inter alia*, with universities, research institutes and organizations of persons with disabilities. The data collection should include questions on programmes and services and their use.

2. States should consider establishing a data bank on disability, which would include statistics on available services and programmes as well as on the different groups of persons with disabilities. They should bear in mind the need to protect individual privacy and personal integrity.

3. States should initiate and support programmes of research on social, economic and participation issues that affect the lives of persons with disabilities and their families. Such research should include studies on the causes, types and frequencies of disabilities, the availability and efficacy of existing programmes and the need for development and evaluation of services and support measures.

4. States should develop and adopt terminology and criteria for the conduct of national surveys, in cooperation with organizations of persons with disabilities.

5. States should facilitate the participation of persons with disabilities in data collection and research. To undertake such research States should particularly encourage the recruitment of qualified persons with disabilities.

6. States should support the exchange of research findings and experiences.

7. States should take measures to disseminate information and knowledge on disability to all political and administration levels within national, regional and local spheres.

Rule 14 Policy-making and planning

States will ensure that disability aspects are included in all relevant policy-making and national planning.

1. States should initiate and plan adequate policies for persons with disabilities at the national level, and stimulate and support action at regional and local levels.

2. States should involve organizations of persons with disabilities in all decision-making relating to plans and programmes concerning persons with disabilities or affecting their economic and social status.

3. The needs and concerns of persons with disabilities should be incorporated into general development plans and not be treated separately.

4. The ultimate responsibility of States for the situation of persons with disabilities does not relieve others of their responsibility. Anyone in charge of services, activities or the provision of information in society should be encouraged to accept responsibility for making such programmes available to persons with disabilities.

5. States should facilitate the development by local communities of programmes and measures for persons with disabilities. One way of doing this could be to develop manuals or check-lists and provide training programmes for local staff.

Rule 15 Legislation

States have a responsibility to create the legal bases for measures to achieve the

objectives of full participation and equality for persons with disabilities.

1. National legislation, embodying the rights and obligations of citizens, should include the rights and obligations of persons with disabilities. States are under an obligation to enable persons with disabilities to exercise their rights, including their human, civil and political rights, on an equal basis with other citizens. States must ensure that organizations of persons with disabilities are involved in the development of national legislation concerning the rights of persons with disabilities, as well as in the ongoing evaluation of that legislation.

2. Legislative action may be needed to remove conditions that may adversely affect the lives of persons with disabilities, including harassment and victimization. Any discriminatory provisions against persons with disabilities must be eliminated. National legislation should provide for appropriate sanctions in case of violations of the principles of non-discrimination.

3. National legislation concerning persons with disabilities may appear in two different forms. The rights and obligations may be incorporated in general legislation or contained in special legislation. Special legislation for persons with disabilities may be established in several ways:

- (a) By enacting separate legislation, dealing exclusively with disability matters;
- (b) By including disability matters within legislation on particular topics;
- (c) By mentioning persons with disabilities specifically in the texts that serve to interpret existing legislation.

A combination of those different approaches might be desirable. Affirmative action provisions may also be considered.

4. States may consider establishing formal statutory complaints mechanisms in order to protect the interests of persons with disabilities.

Rule 16 Economic policies

States have the financial responsibility for national programmes and measures to create equal opportunities for persons with disabilities.

1. States should include disability matters in the regular budgets of all national, regional and local government bodies.

2. States, non-governmental organizations and other interested bodies should interact to determine the most effective ways of supporting projects and measures relevant to persons with disabilities.

3. States should consider the use of economic measures (loans, tax exemptions, earmarked grants, special funds, and so on) to stimulate and support equal participation by persons with disabilities in society.

4. In many States it may be advisable to establish a disability development fund, which could support various pilot projects and self-help programmes at the grass-roots level.

Rule 17 Coordination of work

States are responsible for the establishment and strengthening of national coordinating committees, or similar bodies, to serve as a

national focal point on disability matters.

1. The national coordinating committee or similar bodies should be permanent and based on legal as well as appropriate administrative regulation.

2. A combination of representatives of private and public organizations is most likely to achieve an intersectoral and multidisciplinary composition. Representatives could be drawn from concerned government ministries, organizations of persons with disabilities and non-governmental organizations.

3. Organizations of persons with disabilities should have considerable influence in the national coordinating committee in order to ensure proper feedback of their concerns.

4. The national coordinating committee should be provided with sufficient autonomy and resources to fulfil its responsibilities in relation to its decision-making capacities. It should report to the highest governmental level.

Rule 18 Organizations of persons with disabilities

States should recognize the right of the organizations of persons with disabilities to represent persons with disabilities at national, regional and local levels. States should also recognize the advisory role of organizations of persons with disabilities in decision-making on disability matters.

1. States should encourage and support economically and in other ways the formation and strengthening of organizations of persons with disabilities, family members and/or advocates. States should recognize that those organizations have a role to play in the development of disability policy.

2. States should establish ongoing communication with organizations of persons with disabilities and ensure their participation in the development of government policies.

3. The role of organizations of persons with disabilities could be to identify needs and priorities, to participate in the planning, implementation and evaluation of services and measures concerning the lives of persons with disabilities, and to contribute to public awareness and to advocate change.

4. As instruments of self-help, organizations of persons with disabilities provide and promote opportunities for the development of skills in various fields, mutual support among members and information sharing.

5. Organizations of persons with disabilities could perform their advisory role in many different ways such as having permanent representation on boards of government-funded agencies, serving on public commissions and providing expert knowledge on different projects.

6. The advisory role of organizations of persons with disabilities should be ongoing in order to develop and deepen the exchange of views and information between the State and the organizations.

7. Organizations should be permanently represented on the national coordinating committee or similar bodies.

8. The role of local organizations of persons with disabilities should be developed and

strengthened to ensure that they influence matters at the community level.

Rule 19 Personnel training

States are responsible for ensuring the adequate training of personnel, at all levels, involved in the planning and provision of programmes and services concerning persons with disabilities.

1. States should ensure that all authorities providing services in the disability field give adequate training to their personnel.

2. In the training of professionals in the disability field, as well as in the provision of information on disability in general training programmes, the principle of full participation and equality should be appropriately reflected.

3. States should develop training programmes in consultation with organizations of persons with disabilities, and persons with disabilities should be involved as teachers, instructors or advisers in staff training programmes.

4. The training of community workers is of great strategic importance, particularly in developing countries. It should involve persons with disabilities and include the development of appropriate values, competence and technologies as well as skills which can be practised by persons with disabilities, their parents, families and members of the community.

Rule 20 National monitoring and evaluation of disability programmes in the implementation of the Rules

States are responsible for the continuous monitoring and evaluation of the implementation of national programmes and services concerning the equalization of opportunities for persons with disabilities.

1. States should periodically and systematically evaluate national disability programmes and disseminate both the bases and the results of the evaluations.

2. States should develop and adopt terminology and criteria for the evaluation of disability-related programmes and services.

3. Such criteria and terminology should be developed in close cooperation with organizations of persons with disabilities from the earliest conceptual and planning stages.

4. States should participate in international cooperation in order to develop common standards for national evaluation in the disability field. States should encourage national coordinating committees to participate also.

5. The evaluation of various programmes in the disability field should be built in at the planning stage, so that the overall efficacy in fulfilling their policy objectives can be evaluated.

Rule 21 Technical and economic cooperation

States, both industrialized and developing, have the responsibility to cooperate in and take measures for the improvement of the living conditions of persons with disabilities in developing countries.

1. Measures to achieve the equalization of opportunities of persons with disabilities,

including refugees with disabilities, should be integrated into general development programmes.

2. Such measures must be integrated into all forms of technical and economic cooperation, bilateral and multilateral, governmental and non-governmental. States should bring up disability issues in discussions on such cooperation with their counterparts.

3. When planning and reviewing programmes of technical and economic cooperation, special attention should be given to the effects of such programmes on the situation of persons with disabilities. It is of the utmost importance that persons with disabilities and their organizations are consulted on any development projects designed for persons with disabilities. They should be directly involved in the development, implementation and evaluation of such projects.

4. Priority areas for technical and economic cooperation should include:

(a) The development of human resources through the development of skills, abilities and potentials of persons with disabilities and the initiation of employment-generating activities for and of persons with disabilities;

(b) The development and dissemination of appropriate disability-related technologies and know-how.

5. States are also encouraged to support the formation and strengthening of organizations of persons with disabilities.

6. States should take measures to improve the knowledge of disability issues among staff involved at all levels in the administration of technical and economic cooperation programmes.

Rule 22 International cooperation

States will participate actively in international cooperation concerning policies for the equalization of opportunities for persons with disabilities.

1. Within the United Nations, the specialized agencies and other concerned inter-governmental organizations, States should participate in the development of disability policy.

2. Whenever appropriate, States should introduce disability aspects in general negotiations concerning standards, information exchange, development programmes, etc.

3. States should encourage and support the exchange of knowledge and experience among:

(a) Non-governmental organizations concerned with disability issues;

(b) Research institutions and individual researchers involved in disability issues;

(c) Representatives of field programmes and of professional groups in the disability field;

(d) Organizations of persons with disabilities;

(e) National coordinating committees.

4. States should ensure that the United Nations and the specialized agencies, as well as all intergovernmental and interpar-

liamentary bodies, at global and regional levels, include in their work the global and regional organizations of persons with disabilities.

IV. Monitoring mechanism

1. The purpose of a monitoring mechanism is to further the effective implementation of the Rules. It will assist each State in assessing its level of implementation of the Rules and in measuring its progress. The monitoring should identify obstacles and suggest suitable measures that would contribute to the successful implementation of the Rules. The monitoring mechanism will recognize the economic, social and cultural features existing in individual States. An important element should also be the provision of advisory services and the exchange of experience and information between States.

2. The Rules shall be monitored within the framework of the sessions of the Commission for Social Development. A Special Rapporteur with relevant and extensive experience in disability issues and international organizations shall be appointed, if necessary, funded by extrabudgetary resources, for three years to monitor the implementation of the Rules.

3. International organizations of persons with disabilities having consultative status with the Economic and Social Council and organizations representing persons with disabilities who have not yet formed their own organizations should be invited to create among themselves a panel of experts, on which organizations of persons with disabilities shall have a majority, taking into account the different kinds of disabilities and necessary equitable geographical distribution, to be consulted by the Special Rapporteur and, when appropriate, by the Secretariat.

4. The panel of experts will be encouraged by the Special Rapporteur to review, advise and provide feedback and suggestions on the promotion, implementation and monitoring of the Rules.

5. The Special Rapporteur shall send a set of questions to States, entities within the United Nations system, and intergovernmental and non-governmental organizations, including organizations of persons with disabilities. The set of questions should address implementation plans for the Rules in States. The questions should be selective in nature and cover a number of specific rules for in-depth evaluation. In preparing the questions the Special Rapporteur should consult with the panel of experts and the Secretariat.

6. The Special Rapporteur shall seek to establish a direct dialogue not only with States but also with local non-governmental organizations, seeking their views and comments on any information intended to be included in the reports. The Special Rapporteur shall provide advisory services on the implementation and monitoring of the Rules and assistance in the preparation of replies to the sets of questions.

7. The Department for Policy Coordination and Sustainable Development of the Secretariat, as the United Nations focal point on disability issues, the United Nations Development Programme and other entities and mechanisms within the United Nations system, such as the regional commissions and specialized agencies and inter-agency meetings, shall cooperate with the Special Rapporteur in the implementation and monitoring of the Rules at the national level.

8. The Special Rapporteur, assisted by the Secretariat, shall prepare reports for submission to the Commission for Social Development at its thirty-fourth and thirty-fifth sessions. In preparing such reports, the Rapporteur should consult with the panel of experts.

9. States should encourage national coordinating committees or similar bodies to participate in implementation and monitoring. As the focal points on disability matters at the national level, they should be encouraged to establish procedures to coordinate the monitoring of the Rules. Organizations of persons with disabilities should be encouraged to be actively involved in the monitoring of the process at all levels.

10. Should extrabudgetary resources be identified, one or more positions of inter-regional adviser on the Rules should be created to provide direct services to States, including:

(a) The organization of national and regional training seminars on the content of the Rules;

(b) The development of guidelines to assist in strategies for implementation of the Rules;

(c) Dissemination of information about best practices concerning implementation of the Rules.

11. At its thirty-fourth session, the Commission for Social Development should establish an open-ended working group to examine the Special Rapporteur's report and make recommendations on how to improve the application of the Rules. In examining the Special Rapporteur's report, the Commission, through its open-ended working group, shall consult international organizations of persons with disabilities and specialized agencies, in accordance with rules 71 and 76 of the rules of procedure of the functional commissions of the Economic and Social Council.

12. At its session following the end of the Special Rapporteur's mandate, the Commission should examine the possibility of either renewing that mandate, appointing a new Special Rapporteur or considering another monitoring mechanism, and should make appropriate recommendations to the Economic and Social Council.

13. States should be encouraged to contribute to the United Nations Voluntary Fund on Disability in order to further the implementation of the Rules.



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ILO Worst Forms of Child Labour Convention, 1999 (No.182)

Adopted by the General Conference
of the International Labour Organization
at its eighty-seventh session on 17 June 1999

Entry into force: 19 November 2000, in accordance with article 10

Preamble

T

he General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999, and

Considering the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, as the main priority for national and international action, including international cooperation and assistance, to complement the Convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour, and

Considering that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families, and

Recalling the resolution concerning the elimination of child labour adopted by the International Labour Conference at its 83rd Session in 1996, and

Recognizing that child labour is to a great extent caused by poverty and that the long-term solution lies in sustained eco-

nomie growth leading to social progress, in particular poverty alleviation and universal education, and

Recalling the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, and

Recalling the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, and

Recalling that some of the worst forms of child labour are covered by other international instruments, in particular the Forced Labour Convention, 1930, and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, and

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

Adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Convention, which may be cited as the Worst Forms of Child Labour Convention, 1999:

● Article 1

Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

● Article 2

For the purposes of this Convention, the term "child" shall apply to all persons under the age of 18.

● Article 3

For the purposes of this Convention, the term "the worst forms of child labour" comprises:

- (a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

● Article 4

1. The types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labour Recommendation, 1999.

2. The competent authority, after consultation with the organizations of employers and workers concerned, shall identify where the types of work so determined exist.

3. The list of the types of work determined under paragraph 1 of this Article shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned.

● Article 5

Each Member shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention.

● Article 6

1. Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.

2. Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate.

● Article 7

1. Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.

2. Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:

- (a) Prevent the engagement of children in the worst forms of child labour;
- (b) Provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
- (c) Ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
- (d) Identify and reach out to children at special risk; and
- (e) Take account of the special situation of girls.

3. Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

● Article 8

Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

● Article 9

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

● Article 10

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

● Article 11

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

● Article 12

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and acts of denunciation communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

● Article 13

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

● Article 14

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

● Article 15

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

- (a) The ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 11 above, if and when the new revising Convention shall have come into force;
- (b) As from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

● Article 16

The English and French versions of the text of this Convention are equally authoritative.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000

Annex II

● Preamble

The States Parties to this Protocol, Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights, Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons, Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected, Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, *inter alia*, an international instrument addressing trafficking in women and children, Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime, Have agreed as follows:

I. General provisions

● Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

● Article 2

Statement of purpose

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

● Article 3

Use of terms

For the purposes of this Protocol:

- (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution

of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age.

● Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

● Article 5

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

- (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

- (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
- (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

● Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, *inter alia*, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - (a) Appropriate housing;
 - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
 - (c) Medical, psychological and material assistance; and
 - (d) Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

● Article 7

Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

● Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.
3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.
6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

● Article 9

Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:
 - (a) To prevent and combat trafficking in persons; and
 - (b) To protect victims of trafficking in persons, especially women and children, from revictimization.
2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and

economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

● Article 10

Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:
 - (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
 - (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
 - (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.
2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

● Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls

as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication.

● Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

● Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions

● Article 14

Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol

shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

● Article 15

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

● Article 16

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol.

Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

● Article 17

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

● Article 18

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of

an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

● **Article 19**

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secre-

tary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

● **Article 20**

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

Convention on the Rights of Persons with Disabilities

Adopted by General Assembly resolution 61/106
of 13 December 2006

Preamble

T

he States Parties to the present Convention,

(a) *Recalling* the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,

(b) *Recognizing* that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,

(c) *Reaffirming* the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,

(d) *Recalling* the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,

(e) *Recognizing* that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others,

(f) *Recognizing* the importance of the principles and policy guidelines contained in the World Programme of Action concerning Disabled Persons and in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in influencing the promotion, formulation and evaluation of the policies, plans, programmes and actions at the national, regional and international levels to further equalize opportunities for persons with disabilities,

(g) *Emphasizing* the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development,

(h) *Recognizing* also that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person,

(i) *Recognizing* further the diversity of persons with disabilities,

(j) *Recognizing* the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support,

(k) *Concerned* that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world,

(l) *Recognizing* the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries,

(m) *Recognizing* the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty,

(n) *Recognizing* the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,

(o) *Considering* that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them,

(p) *Concerned* about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national,

ethnic, indigenous or social origin, property, birth, age or other status,

(q) *Recognizing* that women and girls with disabilities are often at greater risk, both within and outside the home of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,

(r) *Recognizing* that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child,

(s) *Emphasizing* the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,

(t) *Highlighting* the fact that the majority of persons with disabilities live in conditions of poverty, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities,

(u) *Bearing in mind* that conditions of peace and security based on full respect for the purposes and principles contained in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of persons with disabilities, in particular during armed conflicts and foreign occupation,

(v) *Recognizing* the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,

(w) *Realizing* that the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights,

(x) *Convinced* that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities,

(y) *Convinced* that a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,
Have agreed as follows:

● Article 1 Purpose

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

● Article 2 Definitions

For the purposes of the present Convention:

“Communication” includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

“Language” includes spoken and signed languages and other forms of non-spoken languages;

“Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

“Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a

particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

“Universal design” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

● Article 3 General principles

The principles of the present Convention shall be:

(a) Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;

(b) Non-discrimination;

(c) Full and effective participation and inclusion in society;

(d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

(e) Equality of opportunity;

(f) Accessibility;

(g) Equality between men and women;

(h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

● Article 4 General obligations

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

(a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in

the present Convention;

(b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;

(c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;

(d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;

(e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;

(f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;

(g) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;

(h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;

(i) To promote the training of professionals and staff working with persons with disabilities in the rights recognized in this Convention so as to better provide the assistance and services guaranteed by those rights.

2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.

5. The provisions of the present Convention shall extend to all parts of federal States without any limitations or exceptions.

● **Article 5 Equality and non-discrimination**

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

● **Article 6 Women with disabilities**

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

● **Article 7 Children with disabilities**

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

● **Article 8 Awareness-raising**

1. States Parties undertake to adopt immediate, effective and appropriate measures:

(a) To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;

(b) To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;

(c) To promote awareness of the capabilities and contributions of persons with disabilities.

2. Measures to this end include:

(a) Initiating and maintaining effective public awareness campaigns designed:

(i) To nurture receptiveness to the rights of persons with disabilities;

(ii) To promote positive perceptions and greater social awareness towards persons with disabilities;

(iii) To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;

(b) Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;

(c) Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;

(d) Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

● **Article 9 Accessibility**

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems,

and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, *inter alia*:

(a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;

(b) Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures to:

(a) Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;

(b) Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;

(c) Provide training for stakeholders on accessibility issues facing persons with disabilities;

(d) Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;

(e) Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;

(f) Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;

(g) Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;

(h) Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

● **Article 10 Right to life**

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

● **Article 11 Situations of risk and humanitarian emergencies**

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

● **Article 12 Equal recognition before the law**

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognize that persons with disabilities enjoy legal capacity

on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

● Article 13 Access to justice

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

● Article 14 Liberty and security of the person

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

(a) Enjoy the right to liberty and security of person;

(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.

● Article 15 Freedom from torture or cruel, inhuman or degrading treatment or punishment

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

● Article 16 Freedom from exploitation, violence and abuse

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, *inter alia*, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

● Article 17 Protecting the integrity of the person

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

● Article 18 Liberty of movement and nationality

1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal

basis with others, including by ensuring that persons with disabilities:

(a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;

(b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;

(c) Are free to leave any country, including their own;

(d) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

● Article 19 Living independently and being included in the community

States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

(a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;

(b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

(c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

● Article 20 Personal mobility

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

(a) Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;

(b) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;

(c) Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;

(d) Encouraging entities that produce mobility aids, devices and assistive technologies

to take into account all aspects of mobility for persons with disabilities.

● **Article 21 Freedom of expression and opinion, and access to information**

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

- (a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- (b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
- (c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;
- (d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;
- (e) Recognizing and promoting the use of sign languages.

● **Article 22 Respect for privacy**

1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

● **Article 23 Respect for home and the family**

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:

- (a) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;
- (b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;

(c) Persons with disabilities, including children, retain their fertility on an equal basis with others.

2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

● **Article 24 Education**

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:

- (a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- (b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- (c) Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

- (a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- (b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

(c) Reasonable accommodation of the individual's requirements is provided;

(d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

(e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

- (a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
- (b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
- (c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

● **Article 25 Health**

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

- (a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;
- (b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early

identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;

(c) Provide these health services as close as possible to people's own communities, including in rural areas;

(d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, *inter alia*, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;

(e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;

(f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

● Article 26 Habilitation and rehabilitation

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:

(a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;

(b) Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.

● Article 27 Work and employment

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, *inter alia*:

(a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

(b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;

(c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;

(d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;

(e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;

(f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;

(g) Employ persons with disabilities in the public sector;

(h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;

(i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

(j) Promote the acquisition by persons with disabilities of work experience in the open labour market;

(k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

● Article 28 Adequate standard of living and social protection

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

(a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;

(b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;

(c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;

(d) To ensure access by persons with disabilities to public housing programmes;

(e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

● Article 29 Participation in political and public life

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

(a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, *inter alia*, by:

(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

(ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;

(iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

(b) Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

(i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

(ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

● Article 30 Participation in cultural life, recreation, leisure and sport

1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to

ensure that persons with disabilities:

(a) Enjoy access to cultural materials in accessible formats;

(b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;

(c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.

2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.

3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.

4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.

5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:

(a) To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;

(b) To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;

(c) To ensure that persons with disabilities have access to sporting, recreational and tourism venues;

(d) To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;

(e) To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.

● Article 31 Statistics and data collection

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:

(a) Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;

(b) Comply with internationally accepted norms to protect human rights and funda-

mental freedoms and ethical principles in the collection and use of statistics.

2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.

3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.

● Article 32 International cooperation

1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, *inter alia*:

(a) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;

(b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;

(c) Facilitating cooperation in research and access to scientific and technical knowledge;

(d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.

● Article 33 National implementation and monitoring

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.

2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.

● Article 34 Committee on the Rights of Persons with Disabilities

1. There shall be established a Committee on the Rights of Persons with Disabilities (hereafter referred to as "the Committee"), which shall carry out the functions hereinafter provided.

2. The Committee shall consist, at the time of entry into force of the present Convention, of twelve experts. After an additional sixty ratifications or accessions to the Convention, the membership of the Committee shall increase by six members, attaining a maximum number of eighteen members.

3. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence and experience in the field covered by the present Convention. When nominating their candidates, States Parties are invited to give due consideration to the provision set out in article 4.3 of the present Convention.

4. The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities.

5. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties from among their nationals at meetings of the Conference of States Parties. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The initial election shall be held no later than six months after the date of entry into force of the present Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit the nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the State Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

7. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of six of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these six members shall be chosen by lot by the chairperson of the meeting referred to in paragraph 5 of this article.

8. The election of the six additional members of the Committee shall be held on the occasion of regular elections, in accordance with the relevant provisions of this article.

9. If a member of the Committee dies or resigns or declares that for any other cause she or he can no longer perform her or his duties, the State Party which nominated the member shall appoint another expert possessing the qualifications and meeting the requirements set out in the relevant provisions of this article, to serve for the remainder of the term.

10. The Committee shall establish its own rules of procedure.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention, and shall convene its initial meeting.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

13. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

● Article 35 Reports by States Parties

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the entry into force of the present Convention for the State Party concerned.

2. Thereafter, States Parties shall submit subsequent reports at least every four years and further whenever the Committee so requests.

3. The Committee shall decide any guidelines applicable to the content of the reports.

4. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports, repeat information previously provided. When preparing reports to the Committee, States Parties are invited to consider doing so in an open and transparent process and to give due consideration to the provision set out in article 4.3 of the present Convention.

5. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

● Article 36 Consideration of reports

1. Each report shall be considered by the Committee, which shall make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned. The State Party may respond with any information it chooses to the Committee. The Committee may request further information from States Parties relevant to the implementation of the present Convention.

2. If a State Party is significantly overdue in the submission of a report, the Commit-

tee may notify the State Party concerned of the need to examine the implementation of the present Convention in that State Party, on the basis of reliable information available to the Committee, if the relevant report is not submitted within three months following the notification. The Committee shall invite the State Party concerned to participate in such examination. Should the State Party respond by submitting the relevant report, the provisions of paragraph 1 of this article will apply.

3. The Secretary-General of the United Nations shall make available the reports to all States Parties.

4. States Parties shall make their reports widely available to the public in their own countries and facilitate access to the suggestions and general recommendations relating to these reports.

5. The Committee shall transmit, as it may consider appropriate, to the specialized agencies, funds and programmes of the United Nations, and other competent bodies, reports from States Parties in order to address a request or indication of a need for technical advice or assistance contained therein, along with the Committee's observations and recommendations, if any, on these requests or indications.

● Article 37 Cooperation between States Parties and the Committee

1. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate.

2. In its relationship with States Parties, the Committee shall give due consideration to ways and means of enhancing national capacities for the implementation of the present Convention, including through international cooperation.

● Article 38 Relationship of the Committee with other bodies

In order to foster the effective implementation of the present Convention and to encourage international cooperation in the field covered by the present Convention:

(a) The specialized agencies and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite specialized agencies and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee, as it discharges its mandate, shall consult, as appropriate, other relevant bodies instituted by international human rights treaties, with a view to ensuring the consistency of their respective reporting guidelines, suggestions and general recommendations, and avoiding duplication and overlap in the performance of their functions.

● Article 39 Report of the Committee

The Committee shall report every two years to the General Assembly and to the Economic and Social Council on its activities, and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

● Article 40 Conference of States Parties

1. The States Parties shall meet regularly in a Conference of States Parties in order to consider any matter with regard to the implementation of the present Convention.

2. No later than six months after the entry into force of the present Convention, the Conference of the States Parties shall be convened by the Secretary-General of the United Nations. The subsequent meetings shall be convened by the Secretary-General of the United Nations biennially or upon the decision of the Conference of States Parties.

● Article 41 Depositary

The Secretary-General of the United Nations shall be the depositary of the present Convention.

● Article 42 Signature

The present Convention shall be open for signature by all States and by regional integration organizations at United Nations Headquarters in New York as of 30 March 2007.

● Article 43 Consent to be bound

The present Convention shall be subject to ratification by signatory States and to formal confirmation by signatory regional integration organizations. It shall be open for accession by any State or regional integration organization which has not signed the Convention.

● Article 44 Regional integration organizations

1. "Regional integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention. Such organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by this Convention. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.

2. References to "States Parties" in the present Convention shall apply to such organizations within the limits of their competence.

3. For the purposes of article 45, paragraph 1, and article 47, paragraphs 2 and 3, any instrument deposited by a regional integration organization shall not be counted.

4. Regional integration organizations, in matters within their competence, may exercise their right to vote in the Conference of States Parties, with a number of votes

equal to the number of their member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

● **Article 45 Entry into force**

1. The present Convention shall enter into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession.

2. For each State or regional integration organization ratifying, formally confirming or acceding to the Convention after the deposit of the twentieth such instrument, the Convention shall enter into force on the thirtieth day after the deposit of its own such instrument.

● **Article 46 Reservations**

1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.

2. Reservations may be withdrawn at any time.

● **Article 47 Amendments**

1. Any State Party may propose an amendment to the present Convention and submit it to the Secretary-General of the United Nations. The Secretary-General shall com-

municate any proposed amendments to States Parties, with a request to be notified whether they favour a conference of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

3. If so decided by the Conference of States Parties by consensus, an amendment adopted and approved in accordance with paragraph 1 of this article which relates exclusively to articles 34, 38, 39 and 40 shall enter into force for all States Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment.

● **Article 48 Denunciation**

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

● **Article 49 Accessible format**

The text of the present Convention shall be made available in accessible formats.

● **Article 50 Authentic texts**

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention shall be equally authentic.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Bibliography

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ARTICLE 1

● Instruments:

Geneva Declaration of the Rights of the Child (1924)

Universal Declaration of Human Rights (1948)

Declaration of the Rights of the Child (1959)

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962)

Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1965)

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules") (1985)

● Other sources:

Committee on the Elimination of Discrimination against Women, General Recommendation No. 21, "Equality in marriage and family relations", 1993, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Committee on the Rights of the Child, General Comment No. 4, "Adolescent health and development in the context of the Convention on the Rights of the Child", 2003, CRC/GC/2003/4; General Comment No. 7, "Implementing child rights in early childhood", 2006, CRC/C/GC/7/Rev.1; General Comment No. 10, "Children's rights in Juvenile Justice", 2007, CRC/C/GC/10

Committee on the Rights of the Child, *Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, CRC/C/2/Rev.8, 7 December 1999

Economic and Social Council, "Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime", resolution 2005/20, 22 July 2005

Human Rights Committee, General Comment No. 17, "Article 24", 1989, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

"The Convention on the Rights of the Child", by Marta Santos Pais, in *Manual on Human Rights Reporting under six major international human rights instruments*, 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

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

ARTICLE 2

● Instruments:

International Convention on the Elimination of All Forms of Racial Discrimination (1965)

International Covenant on Economic, Social and Cultural Rights (1966)

International Covenant on Civil and Political Rights (1966)

Convention on the Elimination of All Forms of Discrimination against Women (1979)

● Other sources:

Alston, P., "The legal framework of the Convention on the Rights of the Child", *Bulletin of Human Rights 91/2: The Rights of the Child*, United Nations, 1991

Commission on Human Rights, "Special Rapporteur on violence against women preliminary report", E/CN.4/1995/42, 22 November 1994

Commission on Human Rights, "The plight of street children", resolution 1994/93, 9 March 1994

Commission on Human Rights, "The question of integrating the human rights of women throughout the United Nations system – Report of the Secretary-General", E/CN.4/1999/67, 1999

Committee on the Rights of the Child, General Comment No. 1, "The aims of education", 2001, CRC/GC/2001/1; General Comment No. 3, "HIV/AIDS and the rights of the child", 2003, CRC/GC/2003/3; General Comment No. 5, "General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)", 2003, CRC/GC/2003/5; General Comment No. 6, "Treatment of unaccompanied and separated children outside their country of origin", 2005, CRC/GC/2005/6; General Comment No. 7, "Implementing child rights in early childhood", 2005, CRC/C/GC/7/Rev.1; General Comment No. 9, "The rights of children with disabilities", 2006, CRC/C/GC/9

Fourth World Conference on Women, Beijing (China), 4-15 September 1995, "Beijing Declaration and Platform for Action", United Nations, A/CONF.177/20/Rev.1

General Assembly, "Further actions and initiatives to implement the Beijing Declaration and Platform for Action", resolution A/RES/S-23/3, 10 June 2000

Human Rights Committee, General Comment No. 17, "Article 24", 1989; General Comment No. 18, "Non-discrimination", 1989, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

International Conference on Population and Development, Cairo (Egypt), 1994, "Report of the International Conference on Population and Development", A/CONF.171/13

World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban (South Africa), 31 August-8 September 2001, "Declaration and Programme of Action", A/CONF.189/12

World Summit for Children, New York (United States of America), 29-30 September 1990, "World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s", CF/WSC/1990/WS-001

ARTICLE 3

● Instruments:

Declaration of the Rights of the Child (1959)

Convention on the Elimination of All Forms of Discrimination against Women (1979)

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 (1986)

● Other sources:

Alston, P., "The legal framework of the Convention on the Rights of the Child", *Bulletin of Human Rights 91/2: The Rights of the Child*, United Nations, 1991

Committee on the Rights of the Child, General Comment No. 3, "HIV/AIDS and the rights of the child", 2003, CRC/GC/2003/3; General Comment No. 5, "General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)", 2003, CRC/GC/2003/5; General Comment No. 6, "Treatment of unaccompanied and separated children outside their country of origin", 2005, CRC/GC/2005/6; General Comment No. 7, "Implementing child rights in early childhood", 2005, CRC/C/GC/7/Rev.1; General Comment No. 8, "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*)", 2006, CRC/C/GC/8

Human Rights Committee, General Comment No. 17, "Article 24", 1989; General Comment No. 19, "Article 23", 1990, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

ARTICLE 4

● Instruments:

International Covenant on Economic, Social and Cultural Rights (1966)

International Covenant on Civil and Political Rights (1966)

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and of Their Destruction (1997)

ILO Worst Forms of Child Labour Convention (No.182) (1999)

● **Other sources:**

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, A/S-27/19/Rev.1, United Nations, New York, 2002

Committee on Economic, Social and Cultural Rights, General Comment No. 3, "The nature of States Parties' obligations", 1990; General Comment No. 8, "The relationship between economic sanctions and respect for economic, social and cultural rights", 1997; General Comment No. 9, "The domestic application of the Covenant", 1998; General Comment No. 10, "The role of national human rights institutions in the protection of economic, social and cultural rights", 1998, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Committee on the Rights of the Child, General Comment No. 2, "The role of independent human rights institutions", 2002, CRC/GC/2002/2; General Comment No. 3, "HIV/AIDS and the rights of the child", 2003, CRC/GC/2003/3; General Comment No. 5, "General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)", 2003, CRC/GC/2003/5

General Assembly, "Further initiatives for social development", resolution A/RES/S-24/2, 15 December 2000

General Assembly, "Principles relating to the status of national institutions" (the "Paris Principles"), resolution A/RES/48/134, 20 December 1993

Human Rights Committee, General Comment No. 3, "Article 2, Implementation at the national level", 1981, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

World Economic Forum, Davos (Switzerland), "Global Compact, 9 Principles", 31 January 1999, www.unglobalcompact.org

World Conference on Human Rights, Vienna (Austria), 14-25 June 1993, "Vienna Declaration and Programme of Action", A/CONF.157/23

World Summit for Children, New York (United States of America), 29-30 September 1990, "World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s", CF/WSC/1990/WS-001

World Summit for Social Development, Copenhagen (Denmark), 6-12 March 1995, "Report of the World Summit for Social Development", A/CONF.166/9

ARTICLE 5

● **Instruments:**

International Covenant on Civil and Political Rights (1966)

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules") (1985)

United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (1990)

● **Other sources:**

Committee on the Elimination of Discrimination against Women, General Recommendation No. 21, "Equality in marriage and family relations", 1994, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Committee on the Rights of the Child, General Comment No. 4, "Adolescent health and development in the context of the Convention on the Rights of the Child", 2003, CRC/GC/2003/4; General Comment No. 7, "Implementing child rights in early childhood", 2005, CRC/C/GC/7/Rev.1; General Comment No. 8, "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*)", 2006, CRC/C/GC/8

Committee on the Rights of the Child, *Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, CRC/C/2/Rev.8, 7 December 1999

General Assembly, "Further actions and initiatives to implement the Beijing Declaration and Platform for Action", resolution A/RES/S-23/3, 10 June 2000

Human Rights Committee, General Comment No. 17, "Article 24", 1989; General Comment No. 19, "Article 23", 1990, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

"The Convention on the Rights of the Child", by Marta Santos Pais, in *Manual on Human Rights Reporting under six major international human rights instruments*, 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

ARTICLE 6

● **Instruments:**

Universal Declaration of Human Rights (1948)

International Covenant on Civil and Political Rights (1966)

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (1989)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)

International Convention for the Protection of All Persons from Enforced Disappearance (2006)

Convention on the Rights of Persons with Disabilities (2006)

● **Other sources:**

Committee on the Elimination of Discrimination against Women, General Recommendation No. 24, "Article 12", 1999, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Committee on the Rights of the Child, General Comment No. 3, "HIV/AIDS and the rights of the child", 2003, CRC/GC/2003/3; General Comment No. 4, "Adolescent health and development in the context of the Convention on the Rights of the Child", 2003, CRC/GC/2003/4; General Comment No. 7, "Implementing child rights in early childhood", 2006, CRC/C/GC/7/Rev.1;

General Comment No. 9, "The rights of children with disabilities", 2006, CRC/C/GC/9;

Fourth World Conference on Women, Beijing (China), 4-15 September 1995, "Beijing Declaration and Platform for Action", United Nations, A/CONF.177/20/Rev.1

General Assembly, "Further actions and initiatives to implement the Beijing Declaration and Platform for Action", resolution A/RES/S-23/3, 10 June 2000

Human Rights Committee, General Comment No. 6, "Article 6", 1982; General Comment No. 14, "Article 6", 1984, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

"The Convention on the Rights of the Child", by Marta Santos Pais, in *Manual on Human Rights Reporting under six major international human rights instruments*, 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

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

United Nations Children's Fund, *The Progress of Nations 1996*, UNICEF, New York, 1996

World Summit for Children, New York (United States of America), 29-30 September 1990, "World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s", CF/WSC/1990/WS-001

World Summit for Social Development, Copenhagen (Denmark), 6-12 March 1995, "Report of the World Summit for Social Development", A/CONF.166/9

ARTICLE 7

● **Instruments:**

Declaration of the Rights of the Child (1959)

Convention on the Reduction of Statelessness (1961)

International Covenant on Civil and Political Rights (1966)

American Convention on Human Rights (1969)

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 (1986)

Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (1993)

● **Other sources:**

Committee on the Rights of the Child, General Comment No. 7, "Implementing child rights in early childhood", 2006, CRC/C/GC/7/Rev.1

Committee on the Rights of the Child, *Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, CRC/C/2/Rev.8, 7 December 1999

Human Rights Committee, General Comment No. 17, "Article 24", 1989, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

"The Convention on the Rights of the Child", by Marta Santos Pais, in *Manual on Human Rights Reporting under six major international human rights instruments*, 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

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

United Nations Children's Fund, *The Progress of Nations 1998*, UNICEF, New York, 1998

ARTICLE 8

● Instruments:

Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of the Victims of International Armed Conflicts (Protocol I) (1977)

Hague Convention on the Civil Aspects of International Child Abduction (1980)

Declaration on the Protection of All Persons from Enforced Disappearance (1992)

Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (1993)

International Convention for the Protection of All Persons from Enforced Disappearance (2006)

● Other sources:

Commission on Human Rights, "Guiding Principles on Internal Displacement", E/CN.4/1998/53/Add.2, 11 February 1998

"The Convention on the Rights of the Child", by Marta Santos Pais, in *Manual on Human Rights Reporting under six major international human rights instruments*, 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

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

ARTICLE 9

● Instruments:

Declaration of the Rights of the Child (1959)

International Covenant on Economic, Social and Cultural Rights (1966)

International Covenant on Civil and Political Rights (1966)

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules") (1985)

Convention on the Rights of Persons with Disabilities (2006)

● Other sources:

Committee on the Rights of the Child, *Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, CRC/C/2/Rev.8, 7 December 1999

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

ARTICLE 10

● Instruments:

International Covenant on Civil and Political Rights (1966)

Hague Convention on the Civil Aspects of International Child Abduction (1980)

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children (1996)

● Other sources:

Committee on the Rights of the Child, General Comment No. 6, "Treatment of unaccompanied and separated children outside their country of origin", 2005, CRC/GC/2005/6

Committee on the Rights of the Child, *Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, CRC/C/2/Rev.8, 7 December 1999

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

ARTICLE 11

● Instruments:

European Convention on the Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children (1980)

Hague Convention on the Civil Aspects of International Child Abduction (1980)

Inter-American Convention on the International Return of Children (1989)

Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children (1996)

● Other sources:

"The Convention on the Rights of the Child", by Marta Santos Pais, in *Manual on Human Rights Reporting under six major international human rights instruments*, 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

ARTICLE 12

● Instruments:

Universal Declaration of Human Rights (1948)

International Covenant on Civil and Political Rights (1966)

Hague Convention on the Civil Aspects of International Child Abduction (1980)

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules") (1985)

United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (1990)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)

ILO Worst Forms of Child Labour Recommendation (No.190) (1999)

Convention on the Rights of Persons with Disabilities (2006)

● Other sources:

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, A/S-27/19/Rev.1, United Nations, New York, 2002

Committee on the Elimination of Discrimination against Women, General Comment No. 23, 1997, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Committee on the Rights of the Child, General Comment No. 1, "The aims of education", 2001, CRC/GC/2001/1; General Comment No. 2, "The role of independent human rights institutions", 2002, CRC/GC/2002/2; General Comment No. 3, "HIV/AIDS and the rights of the child", 2003, CC/GC/2003/3; General Comment No. 5, "General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)", 2003, CRC/GC/2003/5; General Comment No. 7, "Implementing child rights in early childhood", 2005, CRC/C/GC/7/Rev.1; General Comment No. 9, "The rights of children with disabilities", 2006, CRC/C/GC/9; General Comment No. 10, "Children's rights in Juvenile Justice", 2007, CRC/C/GC/10

Committee on the Rights of the Child, *Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, CRC/C/2/Rev.8, 7 December 1999

Earth Summit '92: The United Nations Conference on Environment and Development, Rio de Janeiro 1992, The Regency Press Corporation Ltd., UK, 1992

Economic and Social Council, "Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime", resolution 2005/20, 22 July 2005

Fourth World Conference on Women, Beijing (China), 4-15 September 1995, "Beijing Declaration and Platform for Action", United Nations, A/CONF.177/20/Rev.1

General Assembly, "Report of the independent expert for the United Nations study on violence against children", A/61/299, 29 August 2006

Human Rights Committee, General Comment No. 25, "Article 25", 1996, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Office of the United Nations High Commissioner for Refugees, *Refugee Children: Guidelines on Protection and Care*, UNHCR, Geneva, 1994

"The Convention on the Rights of the Child", by Marta Santos Pais, in *Manual on Human Rights Reporting under six major international human rights instruments*, 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

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

United Nations Conference on Human Settlements (Habitat II) Istanbul (Turkey), 3-14 June 1996, "Report of the United Nations Conference on Human Settlements (Habitat II)", A/CONF.165/14

World Congress against Commercial Sexual Exploitation of Children, Stockholm (Sweden), 27-31 August 1996, "Declaration and Agenda for Action", A/51/385

World Summit for Children, New York (United States of America), 29-30 September 1990, "World Declaration on the Survival, Protection and Development of Children and

Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s", CF/WSC/1990/WS-001

ARTICLE 13

● Instruments:

Universal Declaration of Human Rights (1948)

International Covenant on Civil and Political Rights (1966)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)

Convention on the Rights of Persons with Disabilities (2006)

● Other sources:

Committee on the Rights of the Child, General Comment No. 1, "The aims of education", 2001, CRC/GC/2001/1; General Comment No. 9, "The rights of children with disabilities", 2006, CRC/C/GC/10

Committee on the Rights of the Child, *Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, CRC/C/2/Rev.8, 7 December 1999

Human Rights Committee, General Comment No. 10, "Article 19", 1983; General Comment No. 17, "Article 24", 1989, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

"The Convention on the Rights of the Child", by Marta Santos Pais, in *Manual on Human Rights Reporting under six major international human rights instruments*, 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

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

ARTICLE 14

● Instruments:

Universal Declaration of Human Rights (1948)

International Covenant on Civil and Political Rights (1966)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)

● Other sources:

Committee on the Rights of the Child, General Comment No. 1, "The aims of education", 2001, CRC/GC/2001/1

Committee on the Rights of the Child, *Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, CRC/C/2/Rev.8, 7 December 1999

Human Rights Commission, "Respect for conscientious objection to military service", resolution 1987/46, E/CN.4/1987/60

Human Rights Committee, General Comment No. 22, "Article 18", 1993, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Human Rights Committee, Eighty-second session, 18 October – 5 November 2004, "Views

of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights", Communication No. 1155/2003: Norway. 23/11/2004, CCRP/C/82/D/1155/2003

Manual on Human Rights Reporting under six major international human rights instruments, HR/PUB/91/1, United Nations Centre for Human Rights, Geneva and United Nations Institute for Training and Research (UNITAR), Geneva, United Nations, New York, 1991

ARTICLE 15

● Instruments:

Universal Declaration of Human Rights (1948)

International Covenant on Civil and Political Rights (1966)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

Convention on the Rights of Persons with Disabilities (2006)

● Other sources:

Committee on the Rights of the Child, General Comment No. 1, "The aims of education", 2001, CRC/C/GC/2001/1

General Assembly, "World Programme of Action Concerning Disabled Persons", United Nations Decade of Disabled Persons, 1983-1992, United Nations, New York, 1983

ARTICLE 16

● Instruments:

Universal Declaration of Human Rights (1948)

International Covenant on Civil and Political Rights (1966)

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules") (1985)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

Convention on the Rights of Persons with Disabilities (2006)

● Other sources:

Committee on the Rights of the Child, General Comment No. 4, "Adolescent health and development in the context of the Convention on the Rights of the Child", 2003, CRC/GC/2003/4; General Comment No. 10, "Children's rights in Juvenile Justice", 2007, CRC/C/GC/10

Human Rights Committee, General Comment No. 16, "Article 17", 1988, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

ARTICLE 17

● Instruments:

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 Racism, Apartheid and Incitement to War (UNESCO) (1978)

United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (1990)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)

Convention on the Rights of Persons with Disabilities (2006)

● Other sources:

Committee on the Rights of the Child, General Comment No. 1, "The aims of education", 2001, CRC/GC/2001/1; General Comment No. 3, "HIV/AIDS and the rights of the child", 2003, CC/GC/2003/3; General Comment No. 4, "Adolescent health and development in the context of the Convention on the Rights of the Child", 2003, CRC/GC/2003/4; General Comment No. 7, "Implementing child rights in early childhood", 2005, CRC/C/GC/7/Rev.1; General Comment No. 9, "The rights of children with disabilities", 2006, CRC/C/GC/9

Economic and Social Council, "Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime", resolution 2005/20, 22 July 2005

Fourth World Conference on Women, Beijing (China), 4-15 September 1995, "Beijing Declaration and Platform for Action", United Nations, A/CONF.177/20/Rev.1

Impact of Armed Conflict on Children, Report of the expert of the Secretary-General, Ms. Graça Machel, A/51/306, 26 August 1996

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

Working Group on Children and the Media, "Report to the Committee on the Rights of the Child", High Commissioner for Human Rights/Centre for Human Rights, May 1997

World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban (South Africa), 31 August-8 September 2001, "Declaration and Programme of Action", A/CONF.189/12

World Congress against Commercial Sexual Exploitation of Children, Stockholm (Sweden), 27-31 August 1996, "Declaration and Agenda for Action", A/51/385

ARTICLE 18

● Instruments:

International Covenant on Economic, Social and Cultural Rights (1966)

International Covenant on Civil and Political Rights (1966)

Convention on the Elimination of All Forms of Discrimination against Women (1979)

United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (1990)

ILO Maternity Protection Recommendation (No.191) (2000)

● Other sources:

Committee on Economic, Social and Cultural Rights, General Comment No. 4, "The right to adequate housing", 1991, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Committee on the Rights of the Child, General Comment No. 4, "Adolescent health and development in the context of the Convention on the Rights of the Child", 2003, CRC/GC/2003/4; General Comment No. 7, "Implementing child rights in early childhood", 2005, CRC/C/GC/7 Rev.1

Committee on the Rights of the Child, *Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, CRC/C/2/Rev.8, 7 December 1999

Human Rights Committee, General Comment No. 17, "Article 24", 1989; General Comment No. 19, "Article 23", 1990, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

International Conference on Population and Development, Cairo (Egypt), 5-13 September 1994, "Report of the International Conference on Population and Development", A/CONF.171/13

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

World Summit for Children, New York (United States of America), 29-30 September 1990, "World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s", CF/WSC/1990/WS-001

ARTICLE 19

● Instruments:

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules") (1985)

United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (1990)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)

Convention on the Rights of Persons with Disabilities (2006)

● Other sources:

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, A/S-27/19/Rev.1, United Nations, New York, 2002

Commission on Crime Prevention and Criminal Justice, resolution 3/1 on violence against women and children, April 1994

Commission on Human Rights, "Question of the human rights of all persons subjected to any form of detention or imprisonment; Expert group meeting on children and juveniles in detention: application of human rights standards" Vienna, 30 October – 4 November 1994, Report of the Secretary-General pursuant to Commission on Human Rights resolution 1993/80, E/CN.4/1995/100, 16 December 1994

Committee on the Rights of the Child, General Comment No. 1, "The aims of education", 2001, CRC/GC/2001/1; General Comment No. 3, "HIV/AIDS and the rights of the child", 2003, CRC/GC/2003/3; General Comment No. 4, "Adolescent health and development in the context of the Convention on the Rights of the Child", 2003, CRC/GC/2003/4; General Comment No. 6, "Treatment of unaccompanied and separated children outside their country of origin", 2005, CRC/GC/2005/6; General Comment No. 7, "Implementing child rights in early childhood", 2005, CRC/C/GC/7/Rev.1; General Comment No. 8, "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*)", 2006, CRC/C/GC/8; General Comment No. 9, "The rights of children with disabilities", 2006, CRC/C/GC/9

Economic and Social Council, "Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime", resolution 2005/20, 22 July 2005

General Assembly, "Further actions and initiatives to implement the Beijing Declaration and Platform for Action", resolution A/RES/S-23/3, 10 June 2000

General Assembly, "Report of the independent expert for the United Nations study on violence against children", A/61/299, 29 August 2006

Human Rights Committee, General Comment No. 7, "Article 7", 1982; General Comment No. 20, "Article 7", 1992, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006

ARTICLE 20

● Instruments:

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 (1986)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)

Convention on the Rights of Persons with Disabilities (2006)

● Other sources:

Centre for Human Rights, Professional Training Series No.1, *Human Rights and Social Work: A Manual for Schools of Social Work and the Social Work Profession*, United Nations, New York and Geneva, 1994

Committee on the Rights of the Child, General Comment No. 3, "HIV/AIDS and the rights of the child", 2003, CRC/GC/2003/3; General Comment No. 4, "Adolescent health and development in the context of the Convention on the Rights of the Child", 2003, CRC/GC/2003/4; General Comment No. 6, "Treatment of unaccompanied and separated children outside their country of origin", 2005, CRC/GC/2005/6; General Comment No. 7, "Implementing child rights in early childhood", 2005, CRC/C/GC/7/Rev.1; General Comment No. 9, "The rights of children with disabilities", 2006, CRC/C/GC/9

Committee on the Rights of the Child, *Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, CRC/C/2/Rev.8, 7 December 1999

General Assembly, "Report of the independent expert for the United Nations study on violence against children", A/61/299, 29 August 2006

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

United Nations Guidelines for the Care and Protection of Children without Parental Care (draft)

ARTICLE 21

● Instruments:

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 (1986)

Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (1993)

● Other sources:

Commission on Human Rights, "Report of the Working Group on Contemporary Forms of Slavery on its eighteenth session", E/CN.4/Sub.2/1993/30, 23 June 1993

Committee on the Rights of the Child, *Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, CRC/C/2/Rev.8, 7 December 1999

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

ARTICLE 22

● Instruments:

Convention relating to the Status of Refugees (1951)

Protocol relating to the Status of Refugees (1967)

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules") (1985)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

● Other sources:

Commission on Human Rights, "Guiding Principles on Internal Displacement", E/CN.4/1998/53/Add.2, 11 February 1998

Committee on the Rights of the Child, General Comment No. 6, "Treatment of unaccompanied and separated children outside their country of origin", 2005, CRC/GC/2005/6

Committee on the Rights of the Child, *Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, CRC/C/2/Rev.8, 7 December 1999

Human Rights Committee, General Comment No. 20, "Article 7", 1992, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

International Committee of the Red Cross, Central Tracing Agency and Protection Division, *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*, ICRC, Geneva, January 2004

Office of the United Nations High Commissioner for Refugees, Executive Committee Conclusions: "Refugee Children", No. 47 (1987); "Refugee Children", No. 59 (1989); "Refugee Children and Adolescents", No. 84 (1998); "Protection of the Refugee's Family", No. 88 (1999)

Office of the United Nations High Commissioner for Refugees, *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum*, UNHCR, Geneva, 1997

Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/IP/4/Eng/REV.1, UNHCR, Geneva, 1979, Geneva, Reedited January 1992

Office of the United Nations High Commissioner for Refugees, *Refugee Children: Guidelines on Protection and Care*, UNHCR, Geneva, 1994

Office of the United Nations High Commissioner for Refugees, *Strategy and Activities concerning Refugee Children and Adolescents*, UNHCR, Geneva, 2000

Office of the United Nations High Commissioner for Refugees, *Summary Note – UNHCR's Strategy*

and Activities concerning Refugee Children, UNHCR, Geneva, October 2005

"The Convention on the Rights of the Child", by Marta Santos Pais, in *Manual on Human Rights Reporting under six major international human rights instruments*, 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

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

ARTICLE 23

● Instruments:

Universal Declaration of Human Rights (1948)

International Covenant on Economic, Social and Cultural Rights (1966)

International Covenant on Civil and Political Rights (1966)

Declaration on the Rights of Mentally Retarded Persons (1971)

Declaration on the Rights of Disabled Persons (1975)

Convention on the Elimination of All Forms of Discrimination against Women (1979)

ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention (No.159) (1983)

ILO Vocational Rehabilitation and Employment (Disabled Persons) Recommendation (No.168) (1983)

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)

Convention on the Rights of Persons with Disabilities (2006)

● Other sources:

Commission for Social Development, "Final Report of the Special Rapporteur of the Commission for Social Development on monitoring the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities on his second mission, 1997-2000", E/CN.5/2000/3, February 2000

Commission for Social Development, "Report of the Special Rapporteur of the Commission for Social Development on monitoring the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities on his third mandate, 2000-2002", E/CN.5/2002/4, January 2002

Commission for Social Development, "Report of the Special Rapporteur on Disability of the Commission for Social Development", E/CN.5/2005/5, February 2005

Commission for Social Development, "Report of the Special Rapporteur on Disability of the Commission for Social Development on monitoring the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities", E/CN.5/2006/4, February 2006

Commission for Social Development, "Report of the Special Rapporteur on Monitoring the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities", A/52/56, 23 December 1996

Commission on Human Rights, "Human Rights and Disability; Final Report prepared by Mr. Leandro Despouy, Special Rapporteur", E/CN.4/Sub.2/1991/31, 12 July 1991

Commission on Human Rights, "Report of the Secretary-General prepared pursuant to Sub-Commission resolution 1995/17", E/CN.4/Sub.2/1996/27, 2 July 1996

Commission on Human Rights, Sub-commission on Prevention of Discrimination and Protection of Minorities, resolution 1982/1, 1982

Committee on Economic, Social and Cultural Rights, General Comment No. 5, "Persons with disabilities", 1994, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Committee on the Rights of the Child, General Comment No. 1, "The aims of education", 2001, CRC/GC/2001/1; General Comment No. 4, "Adolescent health and development in the context of the Convention on the Rights of the Child", 2003, CRC/GC/2003/4; General Comment No. 7, "Implementing child rights in early childhood", 2005, CRC/GC/7/Rev.1; General Comment No. 9, "The rights of children with disabilities", 2006, CRC/GC/9

Economic and Social Council, "Children with disabilities", resolution E/1997/L.23, 1997

Fourth World Conference on Women, Beijing (China), 4-15 September 1995, "Beijing Declaration and Platform for Action", United Nations, A/CONF.177/20/Rev.1

General Assembly, "Further actions and initiatives to implement the Beijing Declaration and Platform for Action", resolution A/RES/S-23/3, 10 June 2000

General Assembly, "World Programme of Action Concerning Disabled Persons", United Nations Decade of Disabled Persons, 1983-1992, United Nations, New York, 1983

Human Rights Committee, General Comment No. 18, "Non-discrimination", 1989, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

"Impact of Armed Conflict on Children", Report of the expert of the Secretary-General, Ms Graça Machel", A/51/306, 26 August 1996

International Meeting on the Roles and Functions of National Coordinating Committees on Disability in Developing Countries, Beijing (China), 5-11 November 1990, "Guidelines for the Establishment and Development of National Coordinating Committees on Disability or Similar Bodies", A/C.3/46/4

World Conference on Special Needs Education, "The Salamanca Statement and Framework for Action on Special Needs Education", UNESCO, ED-94/WS/18, 1994

World Summit for Social Development, Copenhagen (Denmark), 6-12 March 1995, "Report of the World Summit for Social Development", A/CONF.166/9

ARTICLE 24

● Instruments:

Universal Declaration of Human Rights (1948)

International Covenant on Economic, Social and Cultural Rights (1966)

International Covenant on Civil and Political Rights (1966)

Declaration on Social Progress and Development (1969)

Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)

Convention on the Rights of Persons with Disabilities (2006)

● Other sources:

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, A/S-27/19/Rev.1, United Nations, New York, 2002

Commission on Human Rights, "Final report of the Special Rapporteur on traditional practices affecting the health of women and children", E/CN.4/Sub.2/1996/6, 14 June 1996

Commission on Human Rights, "Plan of action for the elimination of harmful traditional practices affecting the health of women and children", E/CN.4/Sub.2/1994/10/Add.1, 22 July 1994

Commission on Human Rights, "Report of the Working Group on traditional practices affecting the health of women and children", E/CN.4/1986/42, 4 February 1986

Committee on Economic, Social and Cultural Rights, General Comment No. 3, "The nature of States Parties' obligations", 1990; General Comment No. 12, "The right to adequate food", 1999; General Comment No. 14, "The right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)", 2000; General Comment No. 15, "The right to water (arts. 11 and 12 of the Covenant)", 2002, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Committee on the Elimination of Discrimination against Women, General Recommendation No. 14, "Female circumcision", 1990, General Recommendation No. 24, "Women and health", 1999, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Committee on the Rights of the Child, General Comment No. 3, "HIV/AIDS and the rights of the child", 2003, CRC/GC/2003/3; General Comment No. 4, "Adolescent health and development in the context of the Convention on the Rights of the Child", 2003, CRC/GC/2003/4; General Comment No. 7, "Implementing child rights in early childhood", 2005, CRC/GC/7/Rev.1; General Comment No. 9, "The rights of children with disabilities", 2006, CRC/GC/9

Fourth World Conference on Women, Beijing (China), 4-15 September 1995, "Beijing Declaration and Platform for Action", United Nations, A/CONF.177/20/Rev.1

General Assembly, "Declaration of Commitment on HIV/AIDS", resolution A/RES/S-26/2, 2 August 2001

General Assembly, "Further actions and initiatives to implement the Beijing Declaration and Platform for Action", A/RES/S-23/3, 10 June 2000

General Assembly, "Further initiatives for social development", resolution A/RES/S-24/2, 1 July 2000

General Assembly, "Health as an integral part of development", resolution A/RES/34/58, 29 November 1979

General Assembly, "Traditional or customary practices affecting the health of women and girls", resolution A/RES/56/128, 19 December 2001

General Assembly, "United Nations Millennium Declaration", resolution A/RES/55/2, September 2000

General Assembly, "World Summit Outcome", resolution A/RES/60/1, October 2005

Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding, Florence (Italy), 1990

Innocenti Declaration 2005 on Infant and Young Child Feeding, Florence, Italy, 22 November 2005

International Conference on Nutrition, "World Declaration and Plan of Action for Nutrition", Food and Agriculture Organization/World Health Organization, Rome (Italy), 1992

International Conference on Population and Development, Cairo (Egypt), 5-13 September 1994, "Report of the International Conference on Population and Development", A/CONF.171/13

Joint United Nations Programme on HIV/AIDS/World Health Organization, *AIDS Epidemic Update: December 2006*, UNAIDS, Geneva, 2006

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

United Nations Children's Fund, *The State of the World's Children 2007*, New York, 2006

World Health Assembly, Report of Director-General, A45/28, 1992

World Health Assembly, *Health-for-all in the twenty-first century*, policy paper A51/5, 1998

World Health Assembly resolution: "Maternal and child health and family planning: traditional practices harmful to the health of women and children", WHA47/10, 1994

World Health Organization, *HIV and Infant Feeding: Framework for Priority Action*, WHO, Geneva, 2003

World Health Organization, *International Code of Marketing of Breast-milk Substitutes*, WHO, Geneva, 1981

World Health Organization, *Strategic Directions for Improving the Health and Development of Children and Adolescents*, WHO/FCH/CAH/02.21, 2003

World Health Organization, *The World Health Report 2005 – make every mother and child count*, WHO, Geneva, 2005

World Health Organization Constitution, adopted at International Health Conference, New York, 19 June 1946, as amended, WHO, Geneva 1989

World Health Organization, Department of Immunization, Vaccines and Biologicals, *WHO Vaccine preventable diseases: monitoring system, 2006 global summary*, WHO, Geneva, November 2006

World Health Organization/United Nations Children's Fund, *Child and adolescent injury prevention: a global call to action*, WHO, Geneva, 2005

World Health Organization/United Nations Children's Fund, *Global Strategy for Infant and Young Child Feeding*, WHO, Geneva, 2003

World Health Organization/United Nations Children's Fund, *Primary Health Care (Declaration of Alma-Ata)*, 1978

World Health Organization/United Nations Children's Fund, *Ten steps to successful breastfeeding*, 1989

World Summit for Children, New York (United States of America), 29-30 September 1990, "World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s", CF/WSC/1990/WS-001

World Summit for Social Development, Copenhagen (Denmark), 6-12 March 1995, "Report of the World Summit for Social Development", A/CONF.166/9

ARTICLE 25

● Instruments:

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

● Other sources:

Committee on the Rights of the Child, *Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, CRC/C/2/Rev.8, 7 December 1999

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

ARTICLE 26

● Instruments:

ILO Social Security (Minimum Standards) Convention (No.102) (1952)

International Covenant on Economic, Social and Cultural Rights (1966)

● Other sources:

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, A/S-27/19/Rev.1, United Nations, New York, 2002

Committee on Economic, Social and Cultural Rights, General Comment No. 4, "The rights to adequate housing (art. 11(1) of the Covenant)", 1991, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Committee on the Rights of the Child, *Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, CRC/C/2/Rev.8, 7 December 1999

Department of Economic and Social Affairs, *The Millennium Development Goals Report 2006*, DESA, New York, June 2006

General Assembly, "Further initiatives for social development", resolution A/RES/S-24/2, 1 July 2000

General Assembly, "United Nations Millennium Declaration", resolution A/RES/55/2, September 2000

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

The World Bank, *Keeping the Promise: Promoting Children's Well-being*, a submission to the Special Session of the General Assembly for Follow-up to the World Summit for Children 2001, A/AC.256/CRP.8, December 2000

World Summit for Social Development, Copenhagen (Denmark), 6-12 March 1995, "Report of the World Summit for Social Development", A/CONF.166/9

ARTICLE 27

● Instruments:

Universal Declaration of Human Rights (1948)

United Nations Convention on the Recovery Abroad of Maintenance (1956)

International Covenant on Economic, Social and Cultural Rights (1966)

Reciprocal Enforcement of Maintenance Orders, Hague Convention Countries Order (1993)

● Other sources:

"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, A/S-27/19/Rev.1, United Nations, New York, 2002

Children's Rights and Habitat - Housing Neighbourhood & Settlement, Declaration and Report of the Expert Seminar Precom 111 Edition 1996, Children's Environments Research Group, Human Settlements Commission, Urban Section UNICEF, New York, 1996

Commission on Human Rights, "The plight of street children", resolution 1994/93, 9 March 1994

Committee on Economic, Social and Cultural Rights, General Comment No. 3, "The nature of States Parties' obligations", 1990, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Committee on the Rights of the Child, General Comment No. 7, "Implementing child rights in early childhood", 2006, CRC/C/GC/7/Rev.1

Department of Economic and Social Affairs, *The Millennium Development Goals Report 2006*, DESA, New York, June 2006

General Assembly, "Further actions and initiatives to implement the Beijing Declaration and Platform for Action", resolution A/RES/S-23/3, 10 June 2000

General Assembly, "Further initiatives for social development", resolution A/RES/S-23/3, 15 December 2000

Manual on Human Rights Reporting Under Six Major International Human Rights Instruments, United Nations Centre for Human Rights, Geneva and United Nations Institute for Training and Research (UNITAR) Geneva United Nations, HR/PUB/91/1, New York, 1991

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

The World Bank, *World Development Report 2000/2001: Attacking Poverty*, Oxford University Press, UK, 2001

United Nations Conference on Human Settlements (Habitat II) Istanbul (Turkey), 3-14 June 1996, "Report of the United Nations Conference on Human Settlements (Habitat II)", A/CONF.165/14

World Summit for Children, New York (United States of America), 29-30 September 1990, "World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s", CF/WSC/1990/WS-001

World Summit for Social Development, Copenhagen (Denmark), 6-12 March 1995, "Report of the World Summit for Social Development", A/CONF.166/9

ARTICLE 28

● Instruments:

Universal Declaration of Human Rights (1948)

Convention against Discrimination in Education (1960)

International Covenant on Economic, Social and Cultural Rights (1966)

International Covenant on Civil and Political Rights (1966)

ILO Minimum Age Convention (No.138) (1973)

Recommendation Concerning Education for International Understanding, Cooperation and Peace and Education Relating to Human Rights and Fundamental Freedoms (UNESCO) (1974)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)

Convention on the Rights of Persons with Disabilities (2006)

● Other sources:

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, A/S-27/19/Rev.1, United Nations, New York, 2002

Commission on Human Rights, "Annual report of the Special Rapporteur on the right to education", E/CN.4/2001/52, 11 January 2001

Commission on Human Rights, "Girls' right to education, Report submitted by the Special Rapporteur on the right to education", E/CN.4/2006/45, 8 February 2006

Commission on the Status of Women, "Report on the forty-ninth session", E/CN.6/2005/11, February/March 2005

Committee on Economic, Social and Cultural Rights, General Comment No. 11, "Plans of action for primary education", 1999; General Comment No. 13, "The right to education", 1999, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Committee on the Elimination of Racial Discrimination, General Recommendation XXVII, "Discrimination against Roma", 2000, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Committee on the Rights of the Child, General Comment No. 1, "The aims of education", 2001, CRC/GC/2001/1; General Comment No. 3, "HIV/AIDS and the rights of the child", 2003, CRC/GC/2003/3; General Comment No. 6, "Treatment of unaccompanied and separated children outside their country of origin", 2005, CRC/GC/2005/6; General Comment No. 8, "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*)", 2006, CRC/C/GC/8; General Comment No. 9, "The rights of children with disabilities", 2006, CRC/C/GC/9

Committee on the Rights of the Child, *Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, CRC/C/2/Rev.8, 7 December 1999

Department of Economic and Social Affairs, *The Millennium Development Goals Report 2006*, DESA, New York, June 2006

Fourth World Conference on Women, Beijing (China), 4-15 September 1995, "Beijing Declaration and Platform for Action", United Nations, A/CONF.177/20/Rev.1

General Assembly, "Further actions and initiatives to implement the Beijing Declaration and Platform for Action", resolution A/RES/S-23/3, 10 June 2000

General Assembly, "Report of the independent expert for the United Nations study on violence against children", A/61/299, 29 August 2006

Human Rights Committee, Examination of Fourth Periodic Report of the United Kingdom, CCPR/C/79/Add.55, 27 July 1995

Human Rights Committee, General Comment No. 20, "Article 7", 1992, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

"The Convention on the Rights of the Child", by Marta Santos Pais, in *Manual on Human Rights Reporting under six major international human rights instruments*, 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

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

United Nations Educational, Scientific and Cultural Organization, "Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms", General Conference of UNESCO, 18th session, 19 November 1974

World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban (South Africa), 31 August-8 September 2001, "Declaration and Programme of Action", A/CONF.189/12

World Conference on Education for All, Jomtien (Thailand), 5-9 March 1990, "World Declaration on Education for All and Framework for Action Meeting Basic Learning Needs" World Education Forum, Dakar (Senegal), 26-28 April 2000, "The Dakar Framework for Action, Education for All: Meeting our Collective Commitments", ED-2000/CONF. 211/1

World Summit for Children, New York (United States of America), 29-30 September 1990, "World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s", CF/WSC/1990/WS-001

ARTICLE 29

● Instruments:

Charter of the United Nations and Statute of the International Court of Justice (1945)

Universal Declaration of Human Rights (1948)

International Covenant on Civil and Political Rights (1966)

International Covenant on Economic, Social and Cultural Rights (1966)

Declaration and Integrated Framework of Action on Education for Peace, Human Rights and Democracy (UNESCO) (1995)

● Other sources:

Committee on Economic, Social and Cultural Rights, General Comment No. 13, "The right

to education", 1999, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Committee on the Elimination of Racial Discrimination, General Recommendation XXIX, "Article 1, paragraph 1, of the Convention (Descent)", 2002, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Committee on the Rights of the Child, General Comment No. 1, "The aims of education", 2001, CRC/GC/2001/1; General Comment No. 3, "HIV/AIDS and the rights of the child", 2003, CRC/GC/2003/3; General Comment No. 4, "Adolescent health and development in the context of the Convention on the Rights of the Child", 2003, CRC/GC/2003/4

Committee on the Rights of the Child, *Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, CRC/C/2/Rev.8, 7 December 1999

Earth Summit '92: The United Nations Conference on Environment and Development Rio de Janeiro 1992, The Regency Press Corporation Ltd., UK, 1992

Fourth World Conference on Women, Beijing (China), 4-15 September 1995, "Beijing Declaration and Platform for Action", A/CONF.177/20/Rev.1

General Assembly, "Further actions and initiatives to implement the Beijing Declaration and Platform for Action", resolution A/RES/S-23/3, 10 June 2000

General Assembly, "United Nations Decade for Human Rights Education", resolutions A/RES/48/127, 1993; A/RES/49/184, 1994; and A/RES/50/177, 1995

International Conference on Population and Development, Cairo (Egypt), 5-13 September 1994, "Report of the International Conference on Population and Development", A/CONF.171/13

International Consultative Conference on School Education in relation with Freedom of Religion and Belief, Tolerance and Non-Discrimination, Madrid (Spain), 23-25 November 2001, "Final document"

"The Convention on the Rights of the Child", by Marta Santos Pais, in *Manual on Human Rights Reporting under six major international human rights instruments*, 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

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban (South Africa) 31 August-8 September 2001, "Declaration and Programme of Action", A/CONF.189/12

ARTICLE 30

● Instruments:

International Covenant on Civil and Political Rights (1966)

ILO Indigenous and Tribal Peoples Convention (No.169) (1989)

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)

Declaration on the Rights of Indigenous Peoples (2006)

● **Other sources:**

"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, A/S-27/19/Rev.1, United Nations, New York, 2002

Commission on Human Rights, "Civil and political rights, including the question of religious intolerance, Report of the Special Rapporteur on freedom of religion or belief", E/CN.4/2006/5, 9 January 2006

Committee on the Elimination of Racial Discrimination, General Recommendation XXIII, "Rights of indigenous peoples", 1997; General Recommendation XXVII, "Discrimination against Roma", 2000, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Committee on the Rights of the Child, General Comment No. 1, "The aims of education", 2001, CRC/GC/2001/1; General Comment No. 8, "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*)", 2006, CRC/C/GC/8

Committee on the Rights of the Child, *Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, CRC/C/2/Rev.8, 7 December 1999

Economic and Social Council, Permanent Forum on Indigenous Issues, Second Session, "Indigenous children and youth", 2003, E/C.19/2003/L.1/Rev.1, 21 May 2003

Human Rights Committee, General Comment No. 23, "Article 27", 1994, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Human Rights Council, "Report to the General Assembly on the first session of the Human Rights Council", A/HRC/1/L.10, 30 June 2006

"The Convention on the Rights of the Child", by Marta Santos Pais, in *Manual on Human Rights Reporting under six major international human rights instruments*, 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

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

United Nations Children's Fund, *Basic Services for all?*, by Enrique Delamonica, Jan Vandemoortele, Santosh Mehrotra, UNICEF, Innocenti Research Centre, Florence (Italy), 2000

World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban (South Africa), 31 August-8 September 2001, "Declaration and Programme of Action", A/CONF.189/12

ARTICLE 31

● **Instruments:**

ILO Night Work of Young Persons (Non Industrial Occupations) Convention (No.79) (1946)

ILO Night Work of Young Persons (Industry) Convention (Revised) (No.90) (1948)

Declaration of the Rights of the Child (1959)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)

Convention on the Rights of Persons with Disabilities (2006) ● **Other sources:**

Committee on the Rights of the Child, General Comment No. 1, "The aims of education", 2001, CRC/GC/2001/1; General Comment No. 9, "The rights of children with disabilities", 2006, CRC/C/GC/9

International Association for the Child's Right to Play, *IPA Declaration of the Child's Right to Play*, November 1988 and 1989

"The Convention on the Rights of the Child", by Marta Santos Pais, in *Manual on Human Rights Reporting under six major international human rights instruments*, 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

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

ARTICLE 32

● **Instruments:**

ILO Minimum Age (Industry) Convention (No.5) (1919)

ILO Forced Labour Convention (No.29) (1930)

ILO Medical Examination of Young Persons (Industry) Convention (No.77) (1946)

ILO Medical Examination of Young Persons (Non-Industrial Occupations) Convention (No.78) (1946)

International Convention for the Suppression of the Traffic in Women and Children (1921), as amended by Protocol (1947)

Universal Declaration of Human Rights (1948)

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)

ILO Medical Examination of Young Persons (Underground Work) Convention (No.124) (1965)

International Covenant on Economic, Social and Cultural Rights (1966)

International Covenant on Civil and Political Rights (1966)

ILO Minimum Age Convention (No.138) (1973)

ILO Minimum Age Recommendation (No.146) (1973)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

ILO Declaration on Fundamental Principles and Rights at Work (1998)

ILO Worst Forms of Child Labour Convention (No.182) (1999)

ILO Recommendation on the Worst Forms of Child Labour (No.190) (1999)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention against Transnational Organized Crime (2000)

● **Other sources:**

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, United Nations, New York, 2002

Commission on Human Rights, "Contemporary Forms of Slavery: Report of the Working Group on its eighteenth session", E/CN.4/Sub.2/1993/30, 23 June 1993

Committee on Economic, Social and Cultural Rights, General Comment No. 13, "The right to education", 1999, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Committee on the Rights of the Child, General Comment No. 4, "Adolescent health and development in the context of the Convention on the Rights of the Child", 2003, CRC/GC/2003/4; General Comment No. 7, "Implementing child rights in early childhood", 2005, CRC/C/GC/7/Rev.1; General Comment No. 8, "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*)", 2006, CRC/C/GC/8; General Comment No. 9, "The rights of children with disabilities", 2006, CRC/C/GC/9

Committee on the Rights of the Child, *Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, CRC/C/2/Rev.8, 7 December 1999

Fourth World Conference on Women, Beijing (China), 4-15 September 1995, "Beijing Declaration and Platform for Action", United Nations, A/CONF.177/20/Rev.1

General Assembly, "Further actions and initiatives to implement the Beijing Declaration and Platform for Action", resolution A/RES/S-23/3, 10 June 2000

General Assembly, "Report of the independent expert for the United Nations study on violence against children", A/61/299, 29 August 2006

International Labour Conference, 86th session 1998, *Child Labour Report VI (1): Questionnaire*, International Labour Office, Geneva, 1998 (first published in 1996)

International Labour Conference, 86th session 1998, *Child labour: Targeting the intolerable*, Report VI (1), International Labour Office, Geneva, 1998 (first published in 1996)

International Labour Conference, 90th session 2002, *A future without child labour*, Report I (B), International Labour Office, Geneva, 2002

International Labour Conference, 95th session 2006, *The end of child labour: Within reach*, Report I (B), International Labour Office, Geneva, 2006

International Labour Organization, *Classified Guide to International Labour Standards (Including instruments adopted up to the 83rd Session of the International Labour Conference, 1996)*, Appl.10, ILO, Geneva, 1996

International Labour Organization, *Time-Bound Programme, Manual for Action Planning*, International Training Centre of the ILO, Turin, Italy, 2003.

World Economic Forum, Davos (Switzerland), "Global Compact, 9 Principles", 31 January 1999, www.unglobalcompact.org

World Summit for Children, New York (United States of America), 29-30 September 1990, "World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration on

the Survival, Protection and Development of Children in the 1990s", CF/WSC/1990/WS-001

ARTICLE 33

● Instruments:

Single Convention on Narcotic Drugs (1961), as amended by Protocol (1972)

Convention on Psychotropic Substances (1971)

United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (1990)

ILO Worst Forms of Child Labour Convention (No. 182) (1999)

● Other sources:

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, A/S-27/19/Rev.1, United Nations, New York, 2002

Commission on Human Rights, "Programme of Action for the Elimination of the Exploitation of Child Labour", resolution 1993/79, 10 March 1993

Commission on Narcotic Drugs, "World situation with regard to drug abuse, in particular among children and youth", E/CN.7/2001/4, 6 December 2000

Committee on the Rights of the Child, General Comment No. 3, "HIV/AIDS and the rights of the child", 2003, CRC/GC/2003/3; General Comment No. 4 "Adolescent health and development in the context of the Convention on the Rights of the Child", 2003, CRC/GC/2003/4; General Comment No. 7, "Implementing child rights in early childhood", 2006, CRC/C/GC/7/Rev.1

Council of Europe, "Recommendation 989 on the Fight Against Drug Abuse and Trafficking", 1984

General Assembly, "Declaration on the Guiding Principles of Drug Demand Reduction", resolution A/RES/S-20/3, 10 June 1998

General Assembly, "International cooperation against the world drug problem", resolution A/RES/53/115, 1998

General Assembly, "Political Declaration", resolution A/RES/S-20/2, 21 October 1998

International Conference on Drug Abuse and Illicit Trafficking, Vienna (Austria), 17-26 June 1987, "Declaration and Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control"

United Nations Decade against Drug Abuse 1991-2000, Political Declaration and Global Programme of Action, and resolution S-17/2, 23 February 1990

United Nations, International Drug Control Programme, "Review of the Achievements of the Plan of Action of the World Summit for Children and Consideration of Future Action", A/AC.256/CRP.8, 2001

World Summit for Children, New York (United States of America), 29-30 September 1990, "World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s", CF/WSC/1990/WS-001

ARTICLE 34

● Instruments:

ILO Forced Labour Convention (No.29) (1930)

Universal Declaration of Human Rights (1948)

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)

International Covenant on Civil and Political Rights (1966)

Convention on the Elimination of All Forms of Discrimination Against Women (1979)

Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)

ILO Worst Forms of Child Labour Convention (No.182) (1999)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention against Transnational Organized Crime (2000)

Convention on the Rights of Persons with Disabilities (2006)

● Other sources:

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, A/S-27/19/Rev.1, United Nations, New York, 2002

Commission on Human Rights, "Interim report of the Special Rapporteur on the sale of children, child prostitution and pornography", E/CN.4/1997/95, 7 February 1997

Commission on Human Rights, "Programme of action for the prevention of the sale of children, child prostitution and child pornography and the elimination of the exploitation of child labour", resolution 1992/74, 5 March 1992

Commission on Human Rights, "Need to adopt effective international measures for the prevention and eradication of the sale of children, child prostitution and child pornography", resolution 1994/90, 9 March 1994

Commission on Human Rights, "Preliminary report of the Special Rapporteur on the situation of systematic rape, sexual slavery, and slavery-like practices during periods of armed conflict", E/CN.4/Sub.2/1996/26, 16 July 1996

Commission on Human Rights, "Report of the Special Rapporteur on violence against women, its causes and consequences", E/CN.4/1996/3, 5 February 1996

Commission on Narcotic Drugs, World situation with regard to drug abuse, in particular among children and youth", E/CN.7/2001/4, 6 December 2000

Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, "Violence against women", 1992, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Committee on the Rights of the Child, General Comment No. 3, "HIV/AIDS and the rights of the child", 2003, CRC/GC/2003/3; General Comment No. 4 "Adolescent health and development in the context of the Convention on the Rights of the Child", 2003, CRC/GC/2003/4; General Comment No. 6, "Treatment of unaccompanied and separated children outside their country of origin", 2005, CRC/GC/2005/6

Economic and Social Council, "Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime", resolution 2005/20, 22 July 2005

End Child Prostitution in Asian Tourism (ECPAT), "The International Legal Framework and Current National Legislative and Enforcement Responses", submission to the World Congress against Commercial Sexual Exploitation of Children, 1996

Fourth World Conference on Women, Beijing (China), 4-15 September 1995, "Beijing Declaration and Platform for Action", United Nations, A/CONF.177/20/Rev.1

General Assembly, "Further actions and initiatives to implement the Beijing Declaration and Platform for Action", resolution A/RES/S-23/3, 10 June 2000

General Assembly, "Promotion and Protection of the Rights of the Child: Sale of children, child prostitution and child pornography", A/49/478, 5 October 1994

General Assembly, "Promotion and Protection of the Rights of the Child: Sale of children, child prostitution and child pornography, interim report of Ms Ofelia Calcetas-Santos, Special Rapporteur of the Commission on Human Rights on the sale of children, child prostitution and child pornography", A/51/456, 7 October 1996

General Assembly, "Report of the independent expert for the United Nations study on violence against children", A/61/299, 29 August 2006

Human Rights Committee, General Comment No. 17, "Article 24", 1989, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Impact of Armed Conflict on Children, Report of the expert of the Secretary-General, Ms Graça Machel', A/51/306, 26 August 1996

International Conference on Combating Child Pornography on the Internet, Vienna (Austria), 29 September-1 October 1999, conclusions and recommendations

INTERPOL, "Report of the Standing Working Party on Offences Committed against Minors", Lyon, 1993

Office of the United Nations High Commissioner for Refugees, *Sexual violence against refugees: Guidelines on Prevention and Response*, UNHCR, Geneva, 1995

Office of the United Nations High Commissioner for Refugees, World Health Organization and Joint United Nations Programme on HIV/AIDS, *Guidelines for HIV Interventions in Emergency Settings*, UNAIDS, 1996

Second World Congress on Commercial Sexual Exploitation of Children, Yokohama (Japan), 17- 20 December 2001, "The Yokohama Global Commitment"

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

United Nations Children's Fund, *The State of the World's Children 1997*, Oxford University Press for UNICEF, Oxford and New York, 1996

World Conference on Human Rights, Vienna (Austria), 14-25 June 1993, "Vienna Declaration and Programme of Action", A/CONF.157/24

World Congress against Commercial Sexual Exploitation of Children, Stockholm (Sweden), 27-31 August 1996, "Declaration and Agenda for Action", A/51/385

World Summit for Children, New York (United States of America), 29-30 September 1990, "World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s", CF/WSC/1990/WS-001

World Tourism Organization, *Tourism Bill of Rights and Tourist Code*, 1985

ARTICLE 35

● Instruments:

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)

Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956)

Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (1993)

ILO Worst Forms of Child Labour Convention (No. 182) (1999)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention against Transnational Organized Crime (2000)

● Other sources:

Commission on Human Rights, "Child pornography on the Internet", E/CN.4/2005/78, 23 December 2004)

Commission on Human Rights, "Legal consequences of the sale of children, child prostitution and child pornography, and particularly on the criminalization of child victims and recent national policy and legislative developments to address these concerns", E/CN.4/2003/79, 6 January 2003

Commission on Human Rights, "Programme of Action for the Elimination of the Exploitation of Child Labour", resolution 1993/79, 10 March 1993

Commission on Human Rights, "Programme of Action for the prevention of the sale of children, child prostitution and child pornography and for the elimination of the exploitation of child labour", resolution 1992/74, 5 March 1992

Commission on Human Rights, "Report of the Special Rapporteur on the sale of children, child prostitution and child pornography", E/CN.4/2006/67, 12 January 2006

Commission on Human Rights, "Report of the Working Group on Contemporary Forms of Slavery", E/CN.4/Sub.2/1993/30, 23 June 1993

Committee on the Rights of the Child, General Comment No. 6, "Treatment of unaccompanied and separated children outside their country of origin", 2005, CRC/GC/2005/6

Economic and Social Council, "Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime", resolution 2005/20, 22 July 2005

"Human Organ Transplantation: A report on developments under the auspices of the World Health Organization 1987-1991", *International Digest of Health Legislation* 1991: 42, 389-413

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

Working Group on a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, E/CN.4/1994/WG.14/Add.1

World Congress against Commercial Sexual Exploitation of Children, Stockholm (Sweden), 27-31 August 1996, "Declaration and Agenda for Action", A/51/385

World Health Organization, "Guiding Principles on Human Organ Transplantation", 1991

ARTICLE 36

● Instruments:

International Covenant on Civil and Political Rights (1966)

Convention on the Rights of Persons with Disabilities (2006)

● Other sources:

Committee on the Rights of the Child, General Comment No. 3, "HIV/AIDS and the rights of the child", 2003, CRC/GC/2003/3

Council for International Organizations of Medical Sciences, *International Ethical Guidelines for Biomedical Research Involving Human Subjects*, Geneva, 1993

Human Rights Committee, General Comment No. 20, "Article 7", 1992, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

ARTICLE 37

● Instruments:

Universal Declaration of Human Rights (1948)

Standard Minimum Rules for the Treatment of Prisoners (1957)

International Covenant on Civil and Political Rights (1966)

Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules") (1985)

Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment (1988)

Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989)

Second Optional Protocol to the International Covenant on Civil and Political Rights (1989)

United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (1990)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

United Nations Standard Minimum Rules for Noncustodial Measures (the Tokyo Rules) (1990)

Rome Statute of the International Criminal Court (1998)

Convention on the Rights of Persons with Disabilities (2006)

International Convention for the Protection of All Persons from Enforced Disappearance (2006)

● Other sources:

Centre for Human Rights, Crime Prevention and Criminal Justice Branch, *Human Rights and Pretrial Detention*, Professional Training Series No.3, United Nations, New York and Geneva, 1994

Commission on Crime Prevention and Criminal Justice, resolution 3/1, April 1994

Commission on Human Rights, "Habeas Corpus", resolution 1992/35, 28 February 1992

Commission on Human Rights, "Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions", E/CN.4/2001/9, 4 April 2001

Commission on Human Rights, "Torture and other cruel, inhuman or degrading treatment or punishment", resolution E/CN.4/RES/2001/62, 25 April 2001

Committee on the Rights of the Child, General Comment No. 3, "HIV/AIDS and the rights of the child", 2003, CRC/GC/2003/3; General Comment No. 8, "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*)", 2006, CRC/C/GC/8; General Comment No. 9, "The rights of children with disabilities", 2006, CRC/C/GC/9; General Comment No. 10, "Children's rights in Juvenile Justice", 2007, CRC/C/GC/10

Economic and Social Council, "Guidelines for action on children in the criminal justice system", resolution 1997/30, Annex, 21 July 1997

Economic and Social Council, "Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime", resolution 2005/20, 22 July 2005

Economic and Social Council, "Principles on the effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions", resolution 1985/65, 25 May 1989

General Assembly, "Interim report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment", A/55/290, 11 August 2000

General Assembly, "Official Records of the General Assembly, Supplement No.40", A/44/40, 1989

General Assembly, "Official Records of the General Assembly, Supplement No 40", A/46/40, 1991

General Assembly, "Report of the Committee Against Torture", Supplement No 44, A/50/44, 1995

General Assembly, "Report of the independent expert for the United Nations study on violence against children", A/61/299, 29 August 2006

General Assembly, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment", A/60/316, 30 August 2005

General Assembly, "United Nations Rules for the Protection of Juveniles Deprived of their Liberty", resolution A/RES/45/113, 14 December 1990

General Assembly, "Working towards the elimination of crimes against women committed in the name of honour", resolution A/RES/55/66, 31 January 2001

Human Rights Committee, General Comment No. 7, "Article 7", 1982; General Comment No. 8, "Article 9", 1982; General Comment No. 9, "Article 10", 1982; General Comment No. 20, "Article 7", 1992, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Office of the United Nations High Commissioner for Refugees, Executive Committee Conclusion No. 44, 1986

Office of the United Nations High Commissioner for Refugees, *Refugee Children – Guidelines on Protection and Care*, UNHCR, Geneva, 1994

Office of the United Nations High Commissioner for Refugees, "UNHCR Policy on Refugee Children", EC/SCP/82, 1993

Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006

ARTICLE 38

● Instruments:

Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949)

Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (1949)

Geneva Convention (III) relative to the Treatment of Prisoners of War (1949)

Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949)

Convention relating to the Status of Refugees (1951)

Declaration of the Rights of the Child (1959)

International Covenant on Civil and Political Rights (1966)

Protocol relating to the Status of Refugees (1967)

Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974)

Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of the Victims of International Armed Conflicts (Protocol I) (1977)

Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (1977)

Convention on the Elimination of All Forms of Discrimination against Women (1979)

Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (1980)

Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II) (1996)

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (1997)

Rome Statute of the International Criminal Court (1998)

ILO Worst Forms of Child Labour Convention (No.182) (1999)

Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Adoption of an Additional Distinctive Emblem (Protocol III) (2005)

● Other sources:

"Cape Town Principles on the prevention of recruitment into the armed forces and demobilization and social reintegration of child soldiers in Africa", Cape Town, 30 April

Commission of Human Rights, "Preliminary report of the Special Rapporteur on the situations of systematic rape, sexual slavery and slavery-like practices during periods of armed conflict", E/CN.4/Sub.2/1996/26, 16 July 1996

Commission on Human Rights, "Establishing a monitoring, reporting and compliance mechanism for the protection of children exposed to armed conflict, Report of the Special Representative of the Secretary-General for Children and Armed Conflict", E/CN.4/2005.77, 15 February 2005

Committee on the Rights of the Child, General Comment No. 1, "The aims of education",

2001, CRC/GC/2001/1; General Comment No. 3, "HIV/AIDS and the rights of the child", 2003, CRC/GC/2003/3; General Comment No. 6, "Treatment of unaccompanied and separated children outside their country of origin", 2005, CRC/GC/2005/6

Committee on the Rights of the Child, *Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, CRC/C/2/Rev.8, 7 December 1999; General Comment No. 10, "Children's rights in Juvenile Justice", 2007, CRC/C/GC/10

General Assembly, "An international agreement to ban anti-personnel landmines", resolution A/RES/51/45/5, 10 December 1996

General Assembly, "Report of the independent expert for the United Nations study on violence against children", A/61/299, 29 August 2006

Human Rights Committee, General Comment No. 17, "Article 24", 1989 in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Impact of Armed Conflict on Children, Report of the expert of the Secretary-General, Ms Graça Machel, A/51/306, 26 August 1996

Security Council, "Children and armed conflict", resolutions S/RES/1261(1999), S/RES/1314(2000), S/RES/1379 (2001), S/RES/1460 (2003), S/RES/1539 (2004) and S/RES/1612 (2005)

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

United Nations Children's Fund, "The Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups ("the Paris Commitments")", UNICEF, February 2007. See also www.unicef.org/media/files/ParisPrinciples310107English.pdf

United Nations Children's Fund, "The Paris Principles – Principles and guidelines on children associated with armed forces or armed groups", UNICEF, February 2007. See also www.unicef.org/media/files/ParisPrinciples310107English.pdf

United Nations Secretary-General, "Report to the Security Council", A/55/163-S/2000/712, 21 July 2000

World Conference on Human Rights, Vienna (Austria), 14-25 June 1993, "Vienna Declaration and Programme of Action", A/CONF.157/23

World Summit for Children, New York (United States of America), 29-30 September 1990, "World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s", CF/WSC/1990/WS-001

ARTICLE 39

● Instruments:

Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949)

Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (1949)

Geneva Convention (III) relative to the Treatment of Prisoners of War (1949)

Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949)

Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection

of the Victims of International Armed Conflicts (Protocol I) (1977)

Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (1977)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules") (1985)

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)

United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (1990)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention against Transnational Organized Crime (2000)

Convention on the Rights of Persons with Disabilities (2006)

● Other sources:

Commission on Human Rights, "Programme of Action for the Elimination of the Exploitation of Child Labour", resolution 1993/79, 10 March 1993

Commission on Human Rights, "Programme of action for the prevention of the sale of children, child prostitution and child pornography and the elimination of the exploitation of child labour", resolution 1992/74, annex, 5 March 1992

Committee on the Rights of the Child, General Comment No. 6, "Treatment of unaccompanied and separated children outside their country of origin", 2005, CRC/GC/2005/6; General Comment No. 7, "Implementing child rights in early childhood", 2005, CRC/C/GC/7/Rev.1; General Comment No. 8, "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*)", 2006, CRC/C/GC/8; General Comment No. 10, "Children's rights in Juvenile Justice", 2007, CRC/C/GC/10

International Labour Conference, 86th session 1998, *Child labour: Targeting the intolerable*, Report VI (1), International Labour Office, Geneva, 1998 (first published in 1996)

World Congress against Commercial Sexual Exploitation of Children, Stockholm (Sweden), 27-31 August 1996, "Declaration and Agenda for Action", A/51/385

ARTICLE 40

● Instruments:

ILO Forced Labour Convention (No.29) (1930)

Universal Declaration of Human Rights (1948)

International Covenant on Civil and Political Rights (1966)

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules") (1985)

United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (1990)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

United Nations Standard Minimum Rules for Noncustodial Measures (the Tokyo Rules) (1990)

Convention on the Rights of Persons with Disabilities (2006)

● **Other sources:**

Committee on the Rights of the Child, General Comment No. 9, "The rights of children with disabilities", 2006, CRC/C/GC/9; General Comment No. 10, "Children's rights in Juvenile Justice", 2007, CRC/C/GC/10

Committee on the Rights of the Child, *Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, CRC/C/2/Rev.8, 7 December 1999

Economic and Social Council, "Basic Principles on the use of restorative justice programmes in criminal matters", resolution 2002/12, 2002

Economic and Social Council, "Guidelines for action on children in the criminal justice system", resolution 1997/30, Annex, 21 July 1997

Economic and Social Council, "Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime", resolution 2005/20, 22 July 2005

General Assembly, "Report of the independent expert for the United Nations study on violence against children", A/61/299, 29 August 2006

Human Rights Committee, General Comment No. 17, "Article 24", 1989, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006

ARTICLE 41

● **Instruments:**

International Covenant on Economic, Social and Cultural Rights (1966)

International Covenant on Civil and Political Rights (1966)

● **Other sources:**

General Assembly, "Setting international standards in the field of human rights", resolution A/RES/41/120, 4 December 1986

The United Nations Convention on the Rights of the Child A Guide to the "Travaux Préparatoires", compiled and edited by Sharon Detrick, contributors Jaap Doek, Nigel Cantwell, Martinus Nijhoff Publishers, The Netherlands, 1992

World Conference on Human Rights, Vienna (Austria), 14-25 June 1993, "Vienna Declaration and Programme of Action", A/CONF.157/23

ARTICLE 42

● **Instruments:**

International Covenant on Civil and Political Rights (1966)

● **Other sources:**

Committee on the Rights of the Child, General Comment No. 1, "The aims of education", 2001, CRC/GC/2001/1; General Comment No. 2, "The role of independent human rights institutions", 2002, CRC/GC/2002/2; General Comment No. 5, "General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)", 2003, CRC/GC/2003/5; General Comment No. 6, "Treatment of unaccompanied and separated children outside their country of origin", 2005, CRC/GC/2005/6; General Comment No. 7, "Implementing child rights in early childhood", 2005, CRC/C/GC/7/Rev.1; General Comment No. 9, "The rights of children with disabilities", 2006, CRC/C/GC/9

Human Rights Committee, General Comment No. 3, "Article 2 Implementation at the national level", 1981, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.8, 8 May 2006

OPTIONAL PROTOCOL ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

● **Instruments:**

Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949)

Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (1949)

Geneva Convention (III) relative to the Treatment of Prisoners of War (1949)

Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949)

Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of the Victims of International Armed Conflicts (Protocol I) (1977)

Protocol Additional to the Geneva Conventions of 12 August 1949

and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (1977)

OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

● **Instruments:**

Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (1993)

ILO Worst Forms of Child Labour (No.182) (1999)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention against Transnational Organized Crime (2000)

● **Other sources:**

Commission on Human Rights, "Programme of Action for the prevention of the sale of children, child prostitution and child pornography and for the elimination of the exploitation of child labour", resolution 1992/74, 5 March 1992

World Congress against Commercial Sexual Exploitation of Children, Stockholm (Sweden), 27-31 August 1996, "Declaration and Agenda for Action", A/51/385



Acronyms

AIDS	acquired immune deficiency syndrome
CEDAW	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CRC	Committee on the Rights of the Child
ECOSOC	Economic and Social Council of the United Nations
FAO	Food and Agriculture Organization of the United Nations
GAVI	Global Alliance for Vaccines and Immunization
HIV	human immunodeficiency virus
HRC	Human Rights Committee
ILO	International Labour Organization
IMF	International Monetary Fund
INSTRAW	International Research and Training Institute for the Advancement of Women
INTERPOL	International Criminal Police Organization
IOM	International Organization for Migration
IPA	International Association for the Child's Rights to Play
IPEC	International Programme on the Elimination of Child Labour
MDGs	Millennium Development Goals
NGO	non-governmental organization
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNCHS	United Nations Centre for Human Settlements (Habitat)
UNCTAD	United Nations Conference on Trade and Development
UNODC	United Nations Office on Drugs and Crime
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	United Nations Office of the High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
UNITAR	United Nations Institute for Training and Research
UNRISD	United Nations Research Institute for Social Development
WFP	World Food Programme
WHA	World Health Assembly
WHO	World Health Organization
WSC	World Summit for Children
WTO	World Trade Organization

IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE CHILD

FULLY REVISED THIRD EDITION

Since its adoption, in 1989, the Convention on the Rights of the Child has achieved almost universal ratification. The Implementation Handbook is a practical tool for all those involved in implementing the principles and provisions of the Convention and realizing the human rights of children. Under each article of the Convention, the Handbook records and analyzes the interpretation by the Committee on the Rights of the Child, the internationally-elected body of independent experts established to monitor progress worldwide. The Handbook adds analysis of relevant provisions in other international instruments, comments from other United Nations bodies and global conferences, and in appendices, the full text of the most relevant instruments. Throughout, the Handbook emphasizes the Convention's holistic approach to children's rights: that they are indivisible and interrelated, and that equal importance should be attached to each and every right recognized therein.